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U.S. POSTAL RATE COMMISSION

JUNE 18, 1986

APPENDICES

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APPENDIX A

A POLICY HISTORY OF SELECTED PREFERRED MAIL CATEGORIES:

*In-County Periodical Rate
*Second- and Third-Class Nonprofit Rates
*Library Rate

by

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Prepared for the U.S. Postal Rate Commission, April 20, 1986.

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FOREWORD

This report, prepared for the U.S. Postal Rate Commission, sketches the history of four preferred mail categories: in-county second class, nonprofit second class, nonprofit third class, and library rate fourth class. Pursuant to the contract, the study includes "treatments of the legislative history of Congressional enactments both before and after the Postal Reorganization Act of 1970, and of the development of the general public policies underlying such enactments, and their implementation (including POD and USPS rules.)"

The report begins with a summary of the key historical findings and conclusions that can be drawn from them. The second chapter reviews congressional efforts to enunciate a rationale, and sometimes an administrative mechanism, governing the preferred classifications in postal policy. Chapters three through five deal separately with the preferred subclasses (except for a combined discussion of nonprofit second- and third-class) from their genesis to shortly before the Postal Reorganization Act of 1970. Special attention is given to the circumstances that led to the creation of each rate preference, including the legislative histories of the original laws. Chapter six follows the preferred subclasses from the legislative history of the reorganizaton act to 1982, including their administration by the U.S. Postal Service. Special attention is given to the congressional modifications and reviews of the reorganization act. The annual hearings and debates over the revenue forgone appropriation are treated cursorily except where they introduced major new elements into the ongoing debate.

It has not been possible to dwell on every argument presented in the many congressional hearings and reports dealing with the issues covered here. Readers who seek further details are urged to follow the footnotes to the appropriate sources.

One

Summary and Conclusions

Reduced-rate postage has traditionally rested on the assumption that some mailings yield benefits for senders, recipients, and, most important, society. This rationale traces its roots to the first federal postal policy, which recognized that important social goals could be advanced by promoting the dissemination of information through below-cost newspaper postage. Congress considered the other preferences natural extensions of the long-standing policy that had justified low newspaper rates. In fact, the in-county and nonprofit preferences were simply carved out of the periodical rate, while the library post, part of the fourth-class, made books more accessible to readers. When Congress passed the 1970 Postal Reorganization Act, it reaffirmed the preferential status of these special services. Even before 1970, however, it was clear that some reduced-rate mailings provided too few societal benefits to warrant support by cross-subsidization or taxation.

The value of the preferred rates today can be measured, at least in part, by comparing how well they comport with the policies underlying their creation and the general public policy enunciated by the Postal Reorganization Act.

THE IN-COUNTY RATE

The rate preference for in-county delivery of periodicals has survived for 135 years. Free-in-county delivery was originally designed to protect community media voices, especially in rural America. The economies of scale enjoyed by city publications, plus low newspaper postage, brought many of these papers into the countryside. Free-in-county delivery acted as a buffer, protecting small-town papers from competition with urban periodicals sent through the mails. Aside from protecting rural newspapers as businesses, policymakers believed, the in-county rate preference checked the cultural imperialism of urban America.

Given its lengthy history, this subclass has witnessed few changes. Most important was the gradual decline of the free privilege and the growing importance of low in-county rates. Free-in-county began in 1851 before the post office provided door-to-door delivery. In 1868, Congress decided that papers delivered by letter carriers, whether in or out of county, should pay for the enhanced service. Free-in-county delivery of periodicals continued until 1962, but only on those routes starting from post offices without carrier service. Other in-county periodical deliveries paid postage, but Congress did not increase these rates between 1885 and 1962 (except for a slight adjustment in 1951). Thus, as regular second-class postage rose, albeit slowly, in-county rates remained unchanged, creating an ever greater rate preference. Policymakers paid surprisingly little attention to the growing subsidy of in-county rates, for most of their attention remained focused on the free-delivery privilege, even though it steadily waned in importance. In fact, in 1962, publishers willingly relinquished the free-delivery privilege in return for holding down in-county rates.

The major problem encountered in administering the in-county privilege arose when newspapers began turning to centralized printing plants for production of their publications. At first, some papers used readyprint services -- that is, printing part of the paper out of the county, and Congress amended the law to cover such arrangements. Many decades later, Congress permitted papers printed entirely outside the county of publication to use the in-county rates; this enabled small papers produced at centralized printing plants to retain their in-county privilege. At the same time, it inadvertently allowed large-circulation magazines to use low rates within counties for which they had second-class reentry permits. Congress curbed the practice.

Throughout the long history of the in-county preference, therefore, the policy has been consistently applied to protect media and cultural diversity. Low in-county postage has given local media outlets a slight competitive boost in a communication system with strong nationalizing tendencies. Suburban papers, a recent beneficiary of these low rates, represent community media voices even though they do not serve rural areas.

THE NONPROFIT RATES

Preferred rates for nonprofit mailers became part of postal policy in an offhanded fashion. Congress admitted the publications of certain organizations to the second-class mails in 1894 by waiving strict compliance with the rules of eligibility. At this point, they paid regular second-class rates. But in 1917, as part of a measure to raise revenue for the war, Congress revamped the basis for assessing periodical postage. Before, periodicals paid postage regardless of their advertising content or distance conveyed; the new law created a "zone system" that charged in proportion to the amount of advertising and distance mailed. The zone system was predicated on the belief that profitmaking publications should pay for use of the subsidized postal service according to the benefits they reaped. Publications issued by nonprofit organizations were exempted from this scheme, effectively establishing them as a preferred subclass. The debates suggest that this legislation was aimed more at increasing the postage paid by commercial publishers than conferring a privilege on nonprofit organizations. Discussion of the nonprofit exemption was slight; little was said that illuminated an underlying policy.

The third-class nonprofit privilege received slightly more consideration at its conception. After two years of deliberation, Congress in 1951 raised third-class postage, but exempted qualified nonprofit organizations. The prescribed organizations were those already entitled to the reduced second-class rate, with the addition of veterans groups to both. During the hearings, most organizations seemed chiefly interested in forestalling nonprofit second-class rate increases, but a few, notably those relying on mail solicitations for funding (e.g., the Easter Seal and Christmas Seal campaigns), pressed for an exemption from third-class rate hikes. Higher postage costs, they argued, would force cutbacks in their medical and social services, which might shift responsibilities and costs to the government.

During the next 30 years, Congress lengthened the list of groups entitled to the nonprofit rates. Typically, proposals adding preferred mailers were a small part of wide-ranging bills that included postage increases; debate about higher rates overshadowed all else. In some cases, an amendment late in the legislative process added a new group of mailers without prompting any discussion. Members of Congress added a few preferences to accommodate particular constituents, some of whom intervened in the formal legislative process, while others probably pressed their case informally. In short, the list of preferred mailers grew in a piecemeal fashion, and Congress never articulated a comprehensive policy that explained why some but not all nonprofit groups were entitled to reduced rates.

Two reports, both prepared outside the inner circle of policymakers, offered remarkably similar recommendations to restructure the nonprofit rates. A 1946 report by Charles A. Heiss and a 1954 National Education Association study both recognized the sound public policy behind mailing privileges for some of the qualified organizations -- religious, philanthropic, and educational. Charitable groups in particular existed largely to serve nonmembers, plus they often performed tasks that would otherwise devolve upon government. Heiss and NEA saw much less justification for the rate preferences extended to the other groups -- agricultural, veterans, fraternal, labor. Such organizations, they believed, existed largely to serve their members, who were also the principal beneficiaries of the mailings. Some of these groups certainly rendered meritorious public services, but not regularly enough, in the estimation of Heiss and NEA, to warrant the subsidy conferred by the nonprofit rates.

Only once did Congress seriously consider a proposal that would have revamped the nonprofit subclasses. A 1967 House bill tried to bring the list of eligible organizations more in line with the implicit underlying public policy. It would have permitted the third-class mailings of religious, philanthropic, and educational organizations to pass at the special rates. Other nonprofit groups would have been entitled to the lowest rate only when their mailings were made in connection with some public, charitable service -- that is, when they did not chiefly pertain to and benefit members. This legislation embraced the idea that public policy justified a subsidy only for mailings that provided direct social benefits for other than the sender and receiver. This attempt to restructure the nonprofit rate failed because of objections about the difficulty of administering it.

The rather hazy public policy, plus the absence of much congressional guidance, frustrated officials who administered the laws. Determining which organizations qualified under the broad categories -- educational, scientific, agricultural, and so forth -- proved vexing. The preference for educational organizations in particular became a catch-all because most groups claimed that their activities had informational or instructional aspects. Initially, the post office construed educational narrowly so that it applied only to teacher-student instruction. Later, however, groups that provided training for their members or disseminated information to the public qualified. Congress itself did not encourage strict application of the statutory language, for representatives and senators sometimes observed that groups not explicitly mentioned in the list of prescribed organizations were sufficiently educational or philanthropic in nature to qualify for reduced rates.

The other dimension of eligibility was an organization's nonprofit status. Shortly after the creation of the second-class nonprofit rate, some members of Congress complained that publications mailed at reduced rates carried ample amounts of advertising and in fact produced a profit. The rule, however, was not that a publication operate without making a profit, but that the sponsoring nonprofit organization use any such revenues for its activities. Nonetheless, commercial publishers have long accused nonprofit organizations of using their preferred tax and postal status to unfairly compete for advertising and readers. Congress partly rectified the problem in 1967 when it created zoned rates for the advertising portions of nonprofit publications, though the postage was still below that paid by commercial publishers. In evaluating the nonprofit status of applicants, postal officials have traditionally attached considerable weight to the determinations of the Internal Revenue Service, but have repeatedly emphasized that they are not bound by IRS decisions.

A finding that an organization operated on a nonprofit basis did not resolve all the problems with its use of the mails. Nonprofit organizations have used their postal privilege in conjunction with commercial enterprises to publicize products and services at reduced postage rates. Furthermore, some nonprofit groups' educational mission involved the dissemination of information that advocated positions on public policies. Increasingly, postal officials have had to look beyond the nature of qualified nonprofit organizations to scrutinize the contents of their mailings.

The nonprofit rate subclasses, then, have developed in ways that were never envisioned by the policymakers who created them. Although the original purpose of the second-class nonprofit rate is hard to fathom, the 1917 law unmistakably signaled Congress's belief that publications should be assessed postage commensurate with the financial benefits they reaped from using the mails. When Congress created the third-class nonprofit rate in 1951, it seemed mainly swayed by the appeals of charitable and philanthropic groups. Such organizations testified that they raised funds for medical and social services through bulk mailings. Higher postage would force cutbacks in service and transfer costs to the government. Thus, publicly subsidized postage in the long run saved the public expenditures in other areas. But in practice, much of the mail sent by nonprofit organizations at reduced rates directly benefited their members and only remotely provided demonstrable service to the general public. Such mailings were difficult to reconcile with the Postal Reorganization Act's general mandate that costs should be apportioned to benefits.

THE LIBRARY RATE

The library rate developed with few controversies. Although it took the American Library Association decades to convince policymakers of the need for a library rate, even the post office finally endorsed the plan. The ALA and its allies originally urged Congress to adopt the library rate because of its utility in bringing books to rural readers. The original library rate, therefore, was limited to a 300-mile circulation area. This limitation helped convince the post office that reduced-rate library materials would not burden the costly long-distance mails. Later, however, the ALA successfully argued that the library rate should apply without regard to distance as a means of facilitating interlibrary loans of special scholarly and scientific resources.

The library post grew in two directions. Adding materials -- films, bound and unbound magazines, theses, items for museums and herberia -- elicited little opposition except for halfhearted statements from postal officials about increasing costs. The addition of more eligible mailers likewise provoked few comments. Originally, public libraries and nonprofit organizations, presumably including many educational institutions, were entitled to the library rates. Museums and herberia were added, too. Finally, in 1976, Congress authorized commercial book publishers to use the library rate when they mailed materials to eligible organizations. The ALA and book publishers had been working together for decades to reduce the cost of book shipments. Indirect benefits would accrue to libraries, the ALA believed, because publishers would pass along lower distribution costs.

The library rate continues to be of special importance to rural areas in reducing cultural and informational isolation. Other users, though not suffering impaired access to general information, nonetheless have difficulty in obtaining specialized resources except through interlibrary loans. The 1976 amendment to the reorganization act directing ratemakers to consider mail matter's "educational, cultural, scientific, and informational value to the recipient" pertains to many uses of the library rate. Publishers' entitlement to the library rate, however, seems to be a rather indirect means of either protecting library budgets or getting books into the hands of more patrons.

HISTORY, PUBLIC POLICY AND THE PREFERRED RATES

Some features of the policy governing reduced rates appear strikingly anomalous in light of the Postal Reorganization Act. All sectors of society have a self-interest in the circulation of all mail matter, yet relatively little today is entitled to reduced rates. For example, the public has a self-interest in an enlightened citizenry, but we no longer subsidize the circulation of most periodicals discussing public affairs. Much of the mail entitled to reduced rates undoubtedly enriches society in one way or another, but in most cases the principal beneficiaries are the sender and recipient.

Champions of certain public policies often invoke the weight of history to justify the continuation of government programs they favor. But subsidizing the delivery of certain mail matter, like many public policies, has grown in ways that strayed far from the intentions of those who initiated the policy. In addition, changing social conditions have invalidated some of the reasons that once justified the practice. Finally, attaching weight to the fact that a policy has survived a number of decades provides no assurance that it was well crafted in the first place.

Two

Preferred Rates as a Public Service

All postal functions, in a sense, qualify as a public service. But some postal operations provide much more than convenient service to mailers and recipients. Since the 1790s, if not before, the American postal service has been operated to accomplish certain goals "extraneous to the business of mail delivery."[1] Key features of the service, especially its rate structure, are best understood as expressions of social policy, however ill-defined or unarticulated. Throughout American history, the implicit rationale for preferred rates is that they have positive externalities justifying below-cost handling.[2]

The American post office began as a revenue-generating department of the British Crown, but, after the Revolution, was viewed largely as an agent of nation-building.[3] Among its tasks, the Post Office Department promoted development of the nation's transportation network -- roads, railways, steamships, and airlines -- through the contracts let to carry the mails.[4] But more central to the purpose of the post office was the below-cost delivery of periodicals and other mail matter. Well into the twentieth century, low rates for newspapers were predicated on the notion that widespread circulation of information benefited the sender, receiver and society.[5] Likewise, Congress adopted preferred rates for other kinds of mailings on the assumption that general social benefits compensated for the losses incurred in carrying them.

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[1] Jane Kennedy, "United States Postal Rates, 1845-1951," (Unpublished Ph.D. dissertation, Columbia University, 1955), p. 3.

[2] See "The Postal Reorganization Act: Case Study of Regulated Industry Reform," 58 Virginia Law Review 1030, 1081-1084 (1972).

Notwithstanding the postmasters' general understandable concerns about deficits, as long as the post office actively participated in building the young nation, its public service role prompted little controversy. By the late 1800s, however, the proper public service functions -- and how to finance them -- frequently raised questions. Some in Congress suggested that the public service aspects of postal operations had outlived their usefulness; others claimed that they resulted from successful lobbying by the beneficiaries; and still others accepted the public service responsibilities but wondered how they should be financed. All wrestled with the issue of whether reduced-cost services should be supported by cross-subsidization of different mail classifications, or by the Treasury.

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[3] Wesley E. Rich, The History of the United States Post Office to the Year 1829 (Cambridge: Harvard University Press, 1924), pp. 91-110.

[4] See generally Carl H. Scheele, A Short History of the Mail Service (Washington, D.C.: Smithsonian Institution Press, 1970).

[5] See generally Richard B. Kielbowicz, "News in the Mails, 1690-1863," (Unpublished Ph.D. dissertation, University of Minnesota, 1984).

THE KELLY ACT, 1930

In 1930, Congress addressed the problem of financing the post office's public service functions. Melville Clyde Kelly, a member of the House post office committee and a newspaper publisher, drafted a bill that identified the different sources of the postal deficit.[6] Specifically, the legislation required the post office to keep track of the revenue forgone on various classes of mail -- that is, the difference between preferred rates and the revenue that would have been derived if regular postage had been assessed.[7] The act's tangible accomplishments were largely in the realm of public relations. It did not create a mechanism for appropriating the revenue forgone, but it did alert the public, in the words of the postmaster general, that "[a]mong the objects for which appropriations are made in the annual bill are a number which are extraneous to the primary and essential purposes of the Postal Service."[8]

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[6] Cong. Rec., June 2, 1930, pp. 9908-9909. For a book by the architect of this law, see Clyde Kelly, United States Postal Policy (New York: D. Appleton-Century Co., 1931), especially pp. 88-106.

[7] Act of June 9, 1930, 46 Stat. 523.

[8] S. Rep. No. 619, 71st Cong., 2d sess. (1930), p. 2.

Two of the preferred classes covered by the Kelly Act were free-in-county and second-class nonprofit. The law required the post office to provide the Treasury and General Accounting Office with

> (c) The estimated amount which would have been collected during the year at regular rates of postage on publications going free in the county. . . .
> (e) The estimated difference between the postage revenue collected during the year on mailings of newspapers and periodicals published by and in the interests of religious, educational, scientific, philanthropic, agricultural, labor, and fraternal organizations, and that which would have been collected at zone rates of postage. . . .[9]

Significantly, the law stipulated that the post office submit figures on the difference between the preferred and regular rates, not between the preferred rates and the actual cost of handling. In the Kelly Act, Congress recognized that postal services with positive externalities deserved to be partly financed from general tax revenues.

POSTAL POLICY ACT OF 1958

The Kelly Act expressed in concrete terms the policy that had long guided Congress -- that postal services benefiting society as a whole should be financed by the public, not just senders and recipients. But in the absence of a mechanism to appropriate a public service subsidy, the issue reappeared nearly every time Congress grappled with the recurring postal deficit. By the 1950s, the regular-rate mailers and the department sought some means to make the deficit appear less formidable; both backed the creation of a procedure that regularly furnished funds to the department to underwrite below-cost services authorized by public policy.

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[9] 46 Stat. 523.

Commercial publishers, tired of being blamed for huge revenue deficiencies, began encouraging Congress to better distinguish between the different services provided by the post office. In 1950, for example, Conde Nast Publications attested to the value of reduced rates for the publications of nonprofit organizations, but did not want commercial mailers blamed for the deficit that produced. "[T]he costs attributable to this portion of the volume handled must necessarily be excluded from any consideration of the deficit from second-class mail," Conde Nast urged. Such "costs must be treated as a justifiable Government expense. . . ."[10]

Four years later, an advisory council to the Senate post office committee recommended that "Any expenditures which can be justified only on a national welfare basis . . . should be reimbursed from the general funds of the Treasury."[11] Low rates on the reading portion of periodicals and reduced-cost mailings of qualified nonprofit organizations were justified by their contributions to the public welfare, the advisory council noted. The National Education Association, which contributed to the report, explained that recipients, not the mailers, derived the primary benefits from educational material sent at low rates.[12] The Post Office Department disputed some of the estimates of the advisory council, but concurred that "Subsidies intended by the Congress to categories of users of the mails should be specifically identified. These subsidies should be separately appropriated by the Congress into postal revenues."[13]

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[10] Postal Rate Increases: Hearings on H.R. 2945 before the Senate Comm. on Post Office and Civil Service, 81st Cong., 2d sess. (1950), p. 158.

[11] S. Rep. No. 1086, 83rd Cong., 2d sess. (1954), p. 18.

In 1955, President Dwight Eisenhower asked Congress to raise rates, adjust salaries, establish a Commission on Postal Rates, and distinguish postal costs that should be borne by patrons from those that should be supported by general taxation. Postmaster General Arthur E. Summerfield testified that the post office could be put on a self-sustaining basis if the department were reimbursed for the services performed "in the interest of the public at large."[14] The Senate post office committee pushed for legislation, which, as its report stated, endeavored to "establish for the first time in over 100 years a comprehensive set of ground rules to serve as a guide for the Congress in its rate-making legislation. . . ."[15] The committee had been chaired for seven years by Olin D. Johnston, Democrat from South Carolina, whose labors on behalf of nonprofit and educational organizations had been supported by Frank Carlson, Republican from Kansas and ranking minority member. Both pressed vigorously for the recognition that preferred mailers, and such services as Rural Free Delivery, did not add to the deficit, but contributed to the public welfare.[16] Senator Hubert H. Humphrey agreed that "the community as a whole -- the whole Nation -- if there is to be any subsidy, should assume the responsibility of paying such a subsidy or such a service cost."[17]

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[12] Ibid., p. 19.

[13] U.S. Post Office Department, Financial Policy for the Post Office Department (Washington, D.C.: Government Printing Office, 1954), p. 12.

[14] "Postal Rate Increase," Congressional Digest, June-July 1956, pp. 178, 192.

[15] S. Rep. No. 1321, 85th Cong., 2d sess. (1958), p. 2.

The Postal Policy Act of 1958, part of a larger piece of legislation increasing rates and wages, embodied most of the views of the Senate post office committee. The act began by reaffirming the public service philosophy that had long guided the American post office:

> (4) historically and as a matter of public policy there have evolved, in the operations of the postal establishment authorized by the Congress, certain recognized and accepted relationships among the several classes of mail. It is clear, from the continued expansion of the postal service and from the continued encouragement by the Congress of the most widespread use thereof, that the postal establishment performs many functions and offers its facilities to many users on a basis which can only be justified as being in the interest of the national welfare. . . .[18]

It provided that ratemaking proceedings give "due consideration to," among other factors, "the preservation of the inherent advantages of the postal service in the promotion of social, cultural, intellectual, and commercial intercourse among the people of the United States."

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[16] See, e.g., Cong. Rec., Feb. 25, 1958, pp. 2727-2730.

[17] Cong. Rec., Feb. 28, 1958, p. 3113.

[18] Act of May 27, 1958, 72 Stat. 134.

Going a step beyond the Kelly Act, the 1958 law also prescribed a means to cover the shortfall caused by rate preferences. It enumerated the various reduced-rate and postage-free classes that "shall be considered public services," including those for free-in-county, second- and third-class nonprofit, and library materials. The act authorized an annual appropriation, "which shall be deemed to be attributable to the public services enumerated under . . . this section, equal to the total estimated expenditures of the Post Office Department for the year. . . ."[19] Significantly, Congress was to determine the amount of the public service appropriation by "the total loss resulting from the transmission of matter in the mails free of postage or at reduced rates of postage as provided by statute. . . ."[20]

Although the law used the words "total loss," the next Congress balked at using the Post Office Department's definition of the concept. The disagreement turned on an old distinction -- the difference between revenue forgone and total loss. The revenue forgone concept, used in the Kelly Act, calculated the difference between the preferred and the regular rates for a class of mail; total loss measured the difference between a preferred rate and its total allocated cost. A public service subsidy computed by revenue forgone was smaller than one using total loss. Thus, in 1962 the department asked Congress to clarify the law. Congress heeded the department's request to construe the "total loss" language of the 1958 law literally: "The terms 'total loss' and 'loss' as used in this section mean the amounts by which the total allocated costs incurred by the postal establishment in the performance of the public services enumerated in this subsection exceed the total revenues received by the postal establishment for the performance of such public services."[21]

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[19] *Ibid*., pp. 136-137.

[20] *Ibid*., p. 136 (emphasis added).

The last major congressional pronouncement on the public service function before the Reorganization Act was largely cosmetic. The Postal Revenue and Federal Salary Act of 1967 rearranged the U.S. Code to subsume rates for in-county delivery and publications of nonprofit organizations under the heading "Rates of postage; preferred." Similarly, library materials were brought under the section "Books, films, and other materials; preferred rates."[22]

Before the Reorganization Act, therefore, policymakers and preferred mailers frequently debated the means of financing the public service functions of the post office. Less effort, with some notable exceptions reviewed in the following chapters, was expended on identifying the particular benefits derived from underwriting the transmission of certain kinds of mail matter. Policymakers rarely confronted one central issue -- whether preferential postage rates were the most appropriate and effective means to accomplish certain social goals.

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[21] Act of Oct. 11, 1962, 76 Stat. 832, 836.

[22] Act of Dec. 16, 1967, 81 Stat. 613, 616-620.

Three

Rates for Periodicals
Delivered in the County of Publication

From the beginnings of U.S. postal policy, debates over newspaper postage have reflected a tension between the urban and rural press. A desire to protect country weeklies from the encroachment of urban publications led to the creation of the in-county privilege in 1851. This privilege mirrored urban-rural competition on two levels -- business and cultural. It provided an advantage to rural publishing businesses in a communication system increasingly dominated by national and regional media firms. It also represented a social policy designed to protect rural culture from annihilation by urban institutions and values.[1]

Preferential rates for newspapers delivered in the county of publication have survived with only one brief interruption, making it one of the nation's oldest continuous federal subsidies for a particular type of business.[2] In keeping with the lengthy tradition behind this preferred subclass, Congress adjusted the in-county rates only a handful of times before the 1970 Reorganization Act.

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[1] See generally Richard B. Kielbowicz, "Modernization, Communication Policy, and the Geopolitics of News, 1820-1860," _Critical Studies in Mass Communication_, 3 (March 1986), pp. 21-35.

ORIGINS OF THE FREE IN-COUNTY PRIVILEGE

Throughout most of the nineteenth century, U.S. postal policy facilitated the long-distance circulation of newspapers. To be sure, most papers remained in their own communities. But those who wanted a paper from out-of-town found that the mails made it easy to obtain one. Until 1874, recipients typically paid the postage for periodicals, which made postage an obvious cost of subscribing.[3]

City v. Rural Press

Newspapers published in small towns faced competitive disadvantages in relation to those issued in larger cities. Costs of production were greater, necessitating a higher subscription rate. Many readers, moreover, preferred getting their reading material from one of the larger, and sometimes more attractive, city papers. In short, "by using the mails, any person living near a post road could subscribe to a distant city paper that was cheaper, more authoritative, as timely, and carr[ying] approximately the same stories as most journals produced closer to home."[4]

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[2] For an overview of federal subsidies provided to various businesses, see House Committee on Agriculture, Government Subsidy Historical Review, Committee Print, 85th Cong., 2d sess. (1958).

[3] Until 1845, newspapers paid 1 cent postage for circulation up to 100 miles or anywhere in the state of publication; postage outside the state and beyond 100 miles was 1 1/2 cents. Newspapers paid these low rates regardless of their size and weight. Letter postage, in contrast, was several times higher and steeply graduated according to distance conveyed and number of sheets enclosed. For the history of early newspaper postal policy, see Richard B. Kielbowicz, "The Press, Post Office and Flow of News in the Early Republic," Journal of the Early Republic, 3 (Fall 1983), pp. 255-280.

Taking advantage of low newspaper postage, city publishers actively courted subscribers in the country. Often they retained local agents to solicit and forward subscriptions. By 1820, papers in a dozen or more of the largest cities were publishing special editions expressly for circulation in the countryside. A Goshen, New York, editor analyzed the plight of country journalism in 1827:

> It is well known that post roads and post offices have increased rapidly within a few years; and that almost every person can have convenient access to papers by mail; and printers know, that the New York papers, designed for circulation in the country, are made up twice a week from the daily papers, and published at less expense than we can publish our country papers -- hence they can afford them at a lower price, in proportion to the news they contain, than we can publish our papers in the country; and thus in consequence of the facility of the mails, and the cheapness of the city papers, the circulation of our country papers is rapidly diminishing, and ere long many of them must be consigned to oblivion.[5]

The most notable weekly edition of a major daily, Horace Greeley's New York Tribune, attracted a huge national following, perhaps a million readers.[6]

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[4] Ibid., p. 259.

[5] Milton W. Hamilton, The Country Printer: New York State, 1785-1830 (New York: Columbia University Press, 1936), pp. 236-237.

[6] William H. Hale, Horace Greeley: Voice of the People (New York: Harper & Bros., 1950), p. 227.

A Forerunner of the In-County Privilege

When Congress revamped the postage schedule in 1845, it used postal policy to enhance the competitive position of rural newspapers. Specifically, the law made locally produced papers more cost attractive by allowing them to circulate postage-free within 30 miles of the office of publication.[7]

The privilege of free, local circulation sparked considerable debate. Critics characterized it as a boon for the urban and New England press. "This bill comes before us a bill merely to cheapen postage to the inhabitants of the great cities," said a representative from Alabama.[8] A fellow Alabama Democrat explained that nearly all the inhabitants of New England could receive a newspaper postage-free within 30 miles of their residence. "Not so in the South or West," he complained. Fewer than one-fourth of the people in these regions lived within a thirty-mile radius of a newspaper.[9]

A minority of the House post office committee -- one Democrat and two Whigs, all from the Northeast -- framed the free local postage provision.[10] Regardless of which regions benefited, free circulation within 30 miles enhanced the competitive position of local publications while making it more costly to take distant ones.

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[7] Act of March 3, 1845, 5 Stat. 733, 737.

[8] Cong. Globe, appendix, Feb. [n.d.], 1845, pp. 307-308.

[9] Ibid., Feb. 24, 1845, p. 339.

[10] H.R. Rep. No. 483, 28th Cong., 1st sess., 1844, p. 17.

An across-the-board reduction in newspaper postage, as advocated by some, would have brought city papers into direct competition with the country press. The interests of the people were best served by preserving local outlets for news and opinion, some policymakers argued.[11]

The Free In-County Privilege

Congress withdrew the provision of free local circulation two years later because of declining revenues, but it kept reappearing in proposals as policymakers worked on further policy revisions.[12] In 1848, the Senate debated the merits of restoring the 30-mile free postage zone. Again, it revived the argument of whether such a policy benefited country papers more than those issued from cities. In the less developed parts of the country, it was noted, few subscribers lived within a 30-mile radius of a newspaper. Thus, the Senate considered extending the area of free circulation to 50 miles, or even the entire state of publication. Some found the latter proposal defective because it would have made it easier for the weekly editions of city dailies to circulate in the rural areas of their own state. Despite such objections, the Senate accepted an amendment to permit weekly papers to circulate free in their own states. Congress failed to agree on other parts of the post office bill, however, and adjourned without changing newspaper policy.[13]

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[11] Cong. Globe, March 22, 1844, p. 423. Interestingly, France had adopted a similar measure in 1827. Postage was cut on "periodicals circulated within the department where they were published" to protect against the encroachment of the Parisian press. A. D. Smith, The Development of the Rates of Postage (London: George Allen & Unwin, Ltd., 1917), p. 166.

[12] Act of March 3, 1847, 9 Stat. 202; Cong. Globe, Dec. 20, 1847, p. 57.

In December 1850, Congress resumed debating the postal status of newspapers, this time in earnest. Three months later, Congress adopted the most revolutionary change in newspaper postage -- and the most complex rate schedule -- since the founding of the United States. The 1851 act restored, with alterations, the privilege of postage-free circulation. Where the 1845 law had a 30-mile postage-free zone, the new act permitted free circulation in the county of publication for weekly papers of three ounces or less.[14] This section of the law arose in the House, where it received its fullest explication. Most of those who spoke on behalf of the provision remarked that the country press needed to be insulated from the aggressive city sheets using the mails to circulate throughout the nation. Representative Abraham W. Venable, a North Carolina Democrat, offered the most extreme opinion:

> The poisoned sentiments of the cities, concentrated in their papers, with all the aggravations of such a moral and political cesspool, will invade the simple, pure, conservative atmosphere of the country, and, meeting with no antidote in a rural press, will contaminate and ultimately destroy the purity of sentiment and of purpose, which is the only true conservatism. Fourrierism, agrarianism, socialism, and every other ism, political, moral, and religious, grow in that rank and festering soil; and if such influence and such channels of communication are to be the only ones felt and employed, the press would be the greatest calamity instead of the greatest

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[13] Cong. Globe, Aug. 10-11, 1848, pp. 1059, 1065-1066.

[14] Act of March 3, 1851, 9 Stat. 587-589.

> blessing. We desire our country papers for our country opinions, our provincial politics, the organs of our conservative doctrines, and to assert the truth, uninfluenced by the morbid influences of city associations.[15]

After those intemperate remarks, others who supported the idea of free local circulation took pains to emphasize that they respected the city press, but thought that it was unfair to put rural papers in competition with those from the cities. Produced at lower costs because of their massive circulations, the city papers circulated widely and inexpensively through the mails. Orsamus B. Matteson, a Whig from New York, illustrated this unjust arrangement. When home in Utica, Matteson said, he kept abreast of developments in Washington by reading the local newspapers. But dailies of twice the size could be obtained from New York City, 250 miles away, at the same postage that it cost to take a paper carried only four or forty miles from Utica. "Is not this gross injustice?" he asked. "Ought these country or inland papers thus be compelled to submit not only to fair competition, but to struggle on with the aid of the Government extended virtually to the city journals against them in this manner?" As a privilege extended to the country press, free local circulation simply counterbalanced the privileges accorded city publications, proponents argued.[16]

Those who shared these views, however, disagreed over the dimensions of the free-postage buffer zone. Congressmen debated the various merits of free conveyance within 30 miles of the office of publication, within 40 and 50 miles, anywhere in the county where published, in the congressional district, or in the state. Each variation had certain drawbacks. Two problems existed with free-circulation in county, the option finally adopted. First, counties varied greatly in size; those in the West and Southwest tended to be much larger than those in New England, which meant that those regions benefited more from this provision. Second, newspapers published close to county lines might have circulation restricted in the direction of the border.[17]

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[15] Cong. Globe, Dec. 18, 1850, p. 34.

[16] Ibid., Jan. 11, 1851, p. 220.

The other major feature of the 1851 law, like the in-county privilege, erected hurdles to the long-distance circulation of public information. The heart of the law graduated postage according to the distance conveyed, a sharp departure from earlier policy. Since 1792, there had been only two zones, plus free delivery within a 30-mile radius between 1845 and 1847. The 1851 law created six zones beyond the county of publication. Zoned newspaper postage did not last long; an 1852 law eliminated it, setting a flat rate of 1 cent for the first 3 ounces. This law, however, retained the free in-county privilege, and permitted newspapers of 1 1/2 ounces or less to circulate in the state of publication for half the regular rate.[18]

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[17] Cong. Globe, Dec. 18-19, 31, 1850, and Jan. 4, 11, 14-15, 1851, pp. 76, 84-93, 140, 166-167, 218, 220, 236, 240, 243, 245.

[18] Act of Aug. 30, 1852, 10 Stat. 38-39.

THE IN-COUNTY PRIVILEGE IN THE LATE 19TH CENTURY

Firmly entrenched, the free in-county privilege faced few serious threats in its first several decades. An exceptional law passed in 1873 did withdraw all free mailing privileges, but Congress hastily restored free-in-county delivery. Of more enduring importance, the in-county privilege adjusted to two developments -- an increasing use of weekly papers printed partly outside of the county, and the imposition of small charges for carrier delivery.

A Short-Lived Elimination of the Privilege, 1873

In one of the more notable vicissitudes of postal policymaking, Congress abolished all free mailing privileges -- those for the press as well as public officials and departments -- in 1873, but began restoring them the next year. The 1873 law eliminated two privileges for the press -- free transmission within county and free exchanges among editors.[19] Postal officials had long complained about the various free mailing privileges Congress bestowed on itself and others. In 1873, Postmaster General John Creswell, who had served in the House and Senate, convinced his former colleagues to relinquish their mailing privileges to reduce the department's deficit.[20] In the process, they swept away others' privileges.

Congress soon felt the wrath of state press associations, legislatures, and even some county and city governments. That same year, at least five state press associations adopted resolutions calling upon Congress to restore the press's free mailing privileges.[21] A trade journal boasted that "we trust that the influence of the press will be exercised to secure their repeal at the next session of Congress."[22] When Congress reconvened, it was besieged with petitions, most representing rural interests, imploring it to reinstate the free mailing privileges for the press.[23]

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[19] Act of March 3, 1873, 17 Stat. 559.

[20] Gerald Cullinan, The Post Office Department (New York: Praeger, 1968), p. 86.

Congress revived the in-county privilege in 1874 as part of a major policy shift that established a pound rate for periodicals and required the prepayment of postage by publishers.[24] Up to this time, subscribers typically had paid postage on publications; in practice, much postage owed the department was never collected. In return for shifting the payment of postage to publishers, the 1874 law substantially reduced the rates.[25] The free in-county privilege was but a small part of this package of postal reforms. Joseph Cannon, a representative from Illinois and later one of the most influential Speakers of the House, shepherded the legislation through Congress. He favored the in-county privilege, explaining that it simply compensated rural residents for postal services inferior to that in cities.[26] Thus, the privilege was restored after only a year's suspension, and broadened from weeklies to papers of all frequencies. Later, the Mail Classification Act of 1879 extended the privilege to all second-class matter.[27] Interestingly, Congress restored the postal privilege for country papers before reestablishing its own franking privilege.

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[21] William H. Taft, Missouri Newspapers (Columbia, Mo.: University of Missouri Press, 1964), p. 131; A. O. Bunnell, New York Press Association: 1853-1903 (Dansville: F. A. Owen Publishing Co., 1903), p. 18; Proceedings of the Mississippi Press Association . . . (Jackson: Clarion Steam Book and Job Printing Establishment, n.d.), p. 70; Proceedings of the New Hampshire Publishers, Editors, and Printers' Association (Manchester: Charles F. Livingston, 1873), p. 35; Proceedings of Wisconsin Editorial Association (Madison: Atwood & Rubles, 1873), p. 36.

[22] "The New Postal Regulations," Printers' Circular, May 1873, p. 93.

[23] See, e.g., Cong. Rec., Dec. 3, 1873-June 6, 1874, pp. 28-4468, especially 65-69, 185-186, 504, 2380.

[24] Act of June 23, 1874, 18 Stat. 232-237.

Accommodating "Patent Insides"

In the 1860s, papers began running afoul of postal authorities because their use of readyprint or "patent insides" was thought to render them ineligible for the in-county privilege. Most weekly papers consisted of four pages -- one sheet of paper printed on both sides and folded. To save money, country weeklies turned to readyprint services, companies that printed one side of the sheet (usually the two inside pages) and shipped them to publishers who added local news. By 1880, a handful of companies furnished patent insides to 3,089 of the nation's 8,633 weeklies.[28]

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[25] For details of the 1874 law and its implications for publishers, see generally Richard B. Kielbowicz, "Origins of the Second-Class Mail Category and the Business of Policymaking, 1863-1879," Journalism Monographs No. 96 (April 1986).

[26] Cong. Rec., June 6, 1874, p. 4661.

[27] Act of March 3, 1879, 20 Stat. 356, 362.

Postal authorities had to decide whether these papers satisfied the statutory requirement of being published in the county of circulation. The 1863 law, for example, stipulated that "publishers of weekly newspapers may send to each actual subscriber within the county where their papers are printed and published one copy thereof free of postage."[29] Weekly papers made up from patent insides were printed, at least in part, hundreds of miles from the readers. Some of these papers were denied free circulation within their counties until the post office ruled in 1869 that they were entitled to the privilege.[30] The issue was revived in 1873, when the chairman of the House post office committee, John F. Farnsworth of Illinois, proposed to exclude "cooperative" papers from the in-county privilege. After lobbying by representatives of the readyprint companies, the House committee reworked the bill to include cooperative papers.[31]

When Congress restored the privilege in 1874, it expressly provided for free mailings of "newspapers . . . within the county where the same are printed, in whole or in part, and published. . . ."[32] That should have resolved the matter, but the department encountered situations in which a paper was printed wholly in one county, while maintaining its office of publication in another. The post office ruled that it could not be sent free anywhere.[33] If, however, a paper was typeset in the county of publication, but presswork was done outside, it was entitled to free delivery.[34]

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[28] Alfred M. Lee, *The Daily Newspaper in America* (New York: Macmillan, 1937), p. 386; see generally Elmo S. Watson, *A History of Newspaper Syndicates in the United States, 1865-1935* (Chicago: by the author, 1936).

[29] Act of March 3, 1863, 12 *Stat*. 701, 707 (emphasis added).

[30] "Recent Decisions by the Department," *U.S. Mail and Post Office Assistant*, November 1869, p. 1.

[31] *Cong. Globe*, Feb. 11, 1873, pp. 1261-1264; "Congress and the Co-operative Newspapers," *American Newspaper Reporter*, Feb. 24, 1873, pp. 124, 128; Watson, *A History of Newspaper Syndicates in the United States*, pp. 20-21.

The seemingly straightforward statutory language presented other administrative problems because it failed to cover all possible contingencies. The most vexing arose when a paper was published in the county where a subscriber lived, but the reader or publisher or both used a post office in another county. Postal guides repeatedly carried such instructions as "If a subscriber's usual post office (not residence) is in an adjoining county he may receive his county paper free, but not a paper published in the said adjoining county."[35] In short, subscribers living in the county where a paper was published received it postage-free regardless of the location of the post office of mailing or delivery.[36]

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[32] Act of June 23, 1874, 18 Stat. 231, 233 (emphasis added).

[33] 2 Op. Asst. Att'y Gen. P.O. Dep't 525 (Feb. 28, 1888).

[34] 4 Op. Asst. Att'y Gen. P.O. Dep't 470 (May 23, 1907).

[35] "Answers to Correspondents," U.S. Mail, May 1866, p. 2.

[36] See, e.g., U.S. Postal Guide, April 1875, pp. 46-47.

The Impact of Letter Carriers and Rural Free Delivery

The free-in-county privilege was created before the post office delivered mail to patrons' homes and offices; subscribers called for their papers at the post office. Those living outside of towns felt especially isolated before Rural Free Delivery:

> A farmer went to his post office once a week or so to pick up his mail, he never expected very much, and he was rarely surprised. . . .
>
> As for news, one newspaperman who knew rural America in the 1880's and 1890's very well, estimated that not one farmer in 300 took a daily newspaper in the 1890's, and he could not have been far wrong. Only farmers who lived close enough to a post office to get their mail every day could take full advantage of a daily. Otherwise, daily papers came a "sackful at a time," as one pioneer Nebraska once remarked, and under the circumstances it was more sensible to take a county weekly than a daily that arrived weekly.
>
> Even the county weekly was a rarity in many communities.[37]

Thus, the free in-county privilege, though valuable, was of limited usefulness, for it simply entitled papers to transportation from the post office of entry to other offices in the same county; they were not delivered to readers.

Once the post office inaugurated carrier service in 1863, direct delivery to some subscribers became possible, but this enhanced service was not free. Not long after carrier service was started in larger cities, Congress clarified the law regarding the handling of free in-county publications. An 1868 law prohibited letter carriers from distributing weekly papers sent to subscribers in the county where published unless postage was prepaid at the rate of 5 cents per four months, or .38 cents per copy.[38]

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[37] Wayne E. Fuller, RFD: The Changing Face of Rural America (Bloomington: Indiana University Press, 1964), p. 293.

Cities, then villages, enjoyed carrier service. Rural Americans, however, had to await Rural Free Delivery before they realized the full advantages of a national postal network. In the first few decades of RFD, "by far the largest percentage of all the mail that poured into farm homes over rural routes . . . was second class -- newspapers and magazines -- the kind of mail that did the most to relieve the farmer's isolation."[39] Periodicals distributed in the county of publication were entitled to be sent postage-free over RFD routes that operated from post offices without letter carrier service.[40] The in-county privilege, therefore, still protected the local circulation of weeklies and smaller dailies from competition with the metropolitan papers that tried to penetrate the countryside.[41]

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[38] Act of July 27, 1868, 15 Stat. 194-195.

[39] Fuller, RFD, p. 293.

[40] For a while, considerable confusion existed on whether rural free delivery of newspapers in-county was indeed free since the law clearly prescribed that in-county delivery by city and village carriers subjected a paper to postage. But the department construed the rule liberally to permit free delivery on rural routes. 4 Op. Asst. Att'y Gen. P.O. Dep't 51-56 (Feb. 1, 1906); S. Doc. No. 204, 60th Cong., 1st sess. (1908), pp. 13-17; 1913 Postal Laws & Regulations 226-227.

[41] For the effects of RFD on rural papers, see Fuller, RFD, pp. 293-296.

REVIEWING THE IN-COUNTY PRIVILEGE

Although advances in postal delivery services required adjustments in the in-county privilege, the basic preference remained intact. In fact, of all the preferred categories, the in-county privilege enjoyed the longest period of stability: the rates fixed in 1885 remained essentially unchanged until 1962.[42] Even when regular second-class rates faced greater scrutiny, few recommended eliminating or sharply curtailing the in-county privilege. This reflected, first, the perception that the department did not lose much revenue for the short hauls involved and, second, the solicitude shown by policymakers for country papers in particular and rural postal services in general.

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[42] A 1/8 cent minimum per copy charge was assessed some in-county deliveries in 1951. Otherwise from 1885 until 1962, in-county rates were:

Within county of publication:	
For delivery at office of mailing having city or village carrier service	
By carrier--weekly newspapers	1 cent per pound
--more often than weekly	1 cent per copy
--less often than weekly .... (2 oz. or less)	1 cent per copy
--less often than weekly .... (2 oz. or more)	2 cents per copy
Through post office boxes, general .... delivery, rural and star route	1 cent per pound
For delivery at offices having city ..... or village service other than office of mailing	1 cent per pound
For delivery at offices not having city or village carrier service:	
If printed in county, one copy to..... each subscriber residing in county	Free
If not printed in county	1 cent per pound

U.S. Post Office Department, *United States Domestic Postage Rates, 1789 to 1956* (Washington, D.C.: Government Printing Office, 1956), p. 32.

Reviews Before the 1940s

One of the first major examinations of the second-class mail was the 1906 Penrose-Overstreet Commission, whose hearings attracted representatives from all segments of the publishing industry. The representative of the Weekly Publishers' Association, a group of 4,121 newspapers, seemed reluctant to speak for his members as to the reason for the in-county privilege. When pressed, he said, "The best reason I know for it is that the Government considered that the good accomplished by the local paper offset any cost that it created in carrying or handling it. . . ."[43] The Inland Daily Press Association and Kansas Editorial Association offered a few words in support of the privilege; the American Newspaper Publishers Association called for its elimination.[44] The third assistant postmaster general claimed that excessive use of patent insides contravened the policy behind the in-county privilege. "The greater parts of very many of the newspapers circulated in the mails under this free provision are printed in one central office located in some large city," he told the commission.[45] Contrary to the underlying postal policy, the standardized content in such papers did little to preserve local values and culture.

Free-in-county circulation occupied little of the Penrose-Overstreet Commission's time, and a similar investigative group chaired by Charles Evans Hughes covered much of the same ground in

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[43] H.R. Doc. No. 608, 59th Cong., 2d sess. (1907), p. 354.

[44] Ibid., pp. 164, 370, 498-499.

[45] Ibid., p. 38.

1911 with few tangible consequences.[46] When Congress revamped the rate structure for periodicals in 1917, it carefully noted that "nothing in this title shall affect existing law as to free circulation and existing rates on second-class mail matter within the county of publication."[47] (See chapter four for a discussion of the 1917 law and its impact on the press.) The 1917 law eliminated the flat rate, instead assessing postage by zones and by the proportion of advertising content -- but only for publications circulated outside the county of publication. Initially, rural papers represented by the National Editorial Association (now the National Newspaper Association) voiced mixed feelings about the zone system. In time, however, they realized that the zone system served as a buffer -- just like the free in-county privilege -- in keeping distant papers from competing in their neighborhoods.[48]

The 1946 Heiss Report

In 1946, Charles A. Heiss, a special consultant to the post office, prepared a report on the second-class mails that included an incisive study of the in-county privilege.[49] For fiscal year 1944, he found that 341 million pieces circulated free-in-county. In one month, nearly 15 million pounds of periodicals were carried free in the county of publication, of which smaller dailies accounted for 9,757,000 pounds; weeklies, 4,087,000; metropolitan dailies, 250,000; newspapers of other frequency, 360,000; and other periodicals, 156,000. With few exceptions, major daily papers were ineligible for free delivery because their local circulation areas were completely covered by letter carrier service.[50]

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[46] H.R. Doc. No. 559, 62d Cong., 2d sess. (1912).

[47] Act of Oct. 3, 1917, 40 Stat. 300, 328.

[48] Hiley H. Ward, "Ninety Years of the National Newspaper Association," (Unpublished Ph.D. dissertation, University of Minnesota, 1977), pp. 231-232.

[49] Charles A. Heiss, Report on Second-Class Mail (Washington, D.C.: Government Printing Office, 1946), pp. 29-35.

Analyzing the in-county privilege, Heiss made two broad recommendations -- that it be scaled back and its administration simplified. In the hundred years since the establishment of free local circulation, a number of improvements in communication -- telephones, automobiles, radio, and others -- had substantially reduced rural isolation. The "time is ripe for revision in line with present conditions and requirements," Heiss observed.[51] Thus, he suggested eliminating the free in-county privilege, but still retaining a preferential rate. Heiss also wanted to simplify the complicated rate schedule that applied to periodicals for in-county delivery by letter carriers. A number of factors determined the proper rate -- frequency of publication, weight, and whether the periodical was intended for local or non-local delivery within the county.[52] Heiss's proposal would have eliminated some of the less important distinctions. In all, he proposed to recover more of the cost of handling periodicals in the county of publication, but still leave a substantial rate preference.[53]

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[50] Ibid., pp. 30-32.

[51] Ibid., p. 34.

[52] See above note 42 for the various permutations of in-county rates.

GUARDING AND MODIFYING THE PRIVILEGE

The 1885 rate structure for in-county deliveries of periodicals underwent its first change, albeit it a slight one, in 1951. It survived further challenges until 1962, when the privilege of free-in-county circulation was more or less voluntarily relinquished by the country press.

Fending Off Rate Hikes

The free in-county privilege -- reserved only for post offices without city or village carrier service -- obviously established a preferred subclass. As the years passed, moreover, papers paying for in-county postal carrier delivery enjoyed a growing rate advantage. When Congress created the modern second-class category in 1879, it set the basic rate at 2 cents a pound for delivery both inside and outside the county; dailies paid a higher rate -- 1 cent a copy -- for in-county carrier delivery, probably to discourage metropolitan papers from using the mails for local distribution. Thus, the in-county distinction made no difference in postage for weeklies delivered by letter carrier offices; dailies initially paid more for in-county than out-of-county delivery by letter carrier offices.[54]

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[53] Heiss, Report on Second-Class Mail, pp. 34-35.

Beginning with the 1917 rate hike -- the first since 1885 -- Congress exempted in-county delivery from general postage increases. Second-class rate adjustments in 1928, 1932, 1934, 1952, 1953, 1954, and 1955 did not materially affect papers paying for in-county carrier delivery.[55] Rates for carrier delivery outside the county of publication generally rose, while charges for the same service within county remained at their 1885 levels. Many papers, of course, used a mixture of all three second-class categories -- the free in-county privilege, the low in-county rates, and regular outside-of-county postage.

The varied use of different second-class rate categories occasionally created divisions among different segments of the publishing industry when lobbying on postal matters. In 1947, for example, the National Editorial Association, the principal association of weeklies, informed its members that "Post Office reports for 1944 to 1946 show that the dailies enjoy the chief benefits from free-in-county by a ratio of more than two-to-one over the weeklies."[56] A few years later, a spokesman for NEA (which became the National Newspaper Association in 1965) told the Senate post office committee that he preferred the elimination of the free in-county privilege to across-the-board second-class rate increases. But, he quickly added, "I am expressing more of a personal opinion than I am for the entire membership of our organization, because there is considerable difference of opinion among our membership on that subject. There are a large number who maintain that these exemptions should be retained. I question that wisdom, however."[57] By 1953, NEA member publications were sending an estimated average of 40 percent of their circulation outside-of-county.[58]

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[54] This discussion glosses over some nuances of the postage schedule. For precise details, see note 42.

[55] Ibid. The Act of Oct. 30, 1951, 65 Stat. 672-673 did set a 1/8 cent minimum for both within and outside county mailings, except free-in-county.

[56] NEA Legislative Bulletin, April 7, 1947, quoted in John C. Sim, The Grass Roots Press: America's Community Newspapers (Ames: Iowa State University Press, 1969), p. 103.

After several years of hearings and debates, Congress finally raised second-class rates in 1951 -- the first increase since the 1920s[59] -- but it carefully exempted free-in-county delivery. The 1951 law did, however, impose a 1/8 cent minimum charge on all other publications, both within and outside of county, including those of nonprofit organizations. During hearings on this legislation, the NEA argued for the retention of free-in-county, though other witnesses favored its elimination.[60] Even NEA, however, seemed more concerned about general rate increases than free-in-county. Its witness told the Senate committee that the costs of production for rural newspapers were rising and profits falling, especially in relation to those of metropolitan dailies.[61] Once the bill reached the floor, senators and representatives took pains to emphasize that free-in-county would not be affected. When Senator Paul H. Douglas, a Democrat from Illinois, proposed an increase higher than called for in the bill, he added, "my amendment in no sense interferes with the county press. So I hope that my good friends will not complain that the amendment is intended to put the county newspapers out of business."[62]

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[57] Postal Rate Increases: Hearings on H.R. 2945 before the Senate Comm. on Post Office and Civil Service, 81st Cong., 2d sess. (1950), p. 58.

[58] Postal Rate Revision: Hearings on H.R. 6052 before the House Comm. on Post Office and Civil Service, 83rd Cong., 1st sess. (1953) vol. 2, p. 501.

[59] Rates were increased in 1932, but two years later restored to their former levels. U.S. Post Office Department, United States Domestic Postage Rates, p. 32.

[60] Adjustment of Postal Rates: Hearings on S. 1046, S. 13335, S. 1369 before the Senate Comm. on Post Office and Civil Service, 82d Cong., 1st sess. (1951), pp. 457-467.

Toward the Elimination of Free In-County

The 1958 Postal Rate Increase Act raised the per piece minimum charge from 1/8 cent to 1/2 cent in three annual increments starting Jan. 1, 1959. Initially the per piece charge applied to in-county deliveries, except those enjoying free mailing. Even before the new rates took effect, however, Congress restored the 1/8 cent minimum for in-county carrier deliveries.[63]

By the late 1950s, pressure was building for an overhaul of the in-county rate structure. As Postmaster General Arthur E.

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[61] Act of Oct. 30, 1951, 65 Stat. 672-673.

[62] Cong. Rec., Sept. 7, 1951, p. 11046. See also H.R. Rep. No. 547, 82d Cong., 1st sess. (1951) pp. 1-2; Cong. Rec., Sept. 18, 1951, p. 11555.

[63] Act of Aug. 28, 1958, 72 Stat. 1089. Apparently, Congress had inadvertently applied the increases to in-county delivery. See H.R. Rep. No. 2511, 85th Cong., 2d sess. (1958); S. Rep. No. 2316, 85th Cong., 2d sess. (1958).

Summerfield reminded Congress in 1958, adding the 1/8 cent minimum per copy charge had been the only change for in-county rates since 1885.[64] In 1957, he reported, the post office handled 351 million postage-free copies within county, 520 million at 1 cent a pound, and 321 million at the 1/8 cent minimum per piece rate -- nearly 1.2 billion copies at the in-county rates.

In 1962, partly with the assent of small newspapers, Congress eliminated free-in-county delivery. As indicated by the 1957 figures mentioned above, only about one-fourth of the in-county mailings were going postage-free. Thus, its value to the country press had vastly diminished since its enactment in 1851. With rate hikes apparently imminent, some rural publishers seemed willing to sacrifice the free-in-county privilege to retain other favorable rates. During the hearings, Senator Mike Monroney, Democrat of Oklahoma, expressed appreciation for this stand:

> Since these smaller newspapers have volunteered to give up the free-in-county rate, which is 100 years old, I feel that we could and should try to maintain the present in-county rates if possible, and I was impressed by your testimony showing quite clearly that you need a broader area for this county rate where newspapers are distributed through one post office. . . . Today county lines are an obsolete measure of a trade area because of the automobile, and perhaps we should agree on an area of 50 to 100 miles.[65]

The publishers' willingness to give up the free-in-county privilege helped keep the minimum per copy rate at 1/8 cent rather than the 1/4 cent originally proposed.[66] The vice president of NEA helped the Senate post office committee overhaul the in-county rate structure.[67] And Chairman Olin D. Johnston, Democrat of South Carolina, declared, "I want to do anything I can to help the country newspaper."[68]

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[64] *Postal Rate Revision of 1962: Hearings on H.R. 7927 before the Senate Comm. on Post Office and Civil Service*, 87th Cong., 1st sess. (1962), p. 128.

[65] H.R. Rep. 2511, 85th Cong., 2d sess. (1958), pp. 3-4.

During the hearings and debates, at least three reasons were given for the elimination of free-in-county circulation. First, in the words of Senator Monroney, the newspapers were "tired of being accused of being freeloaders on Uncle Sam with this free-in-county business."[69] Second, the conditions necessitating free-in-county in the nineteenth century had changed.[70] Third, newspapers issued in towns near county lines found free-in-county delivery to be of limited value.[71]

The 1962 law recognized all second-class in-county rates as a public service whose costs were partly subsidized by congressional appropriation. It fixed in-county rates for weeklies at 1 cent a pound for 1963 and 1964 and 1 1/4 cent thereafter, or, if applicable, a minimum charge of 1/8 cent per piece. Publications other than weeklies paid somewhat higher postage.[72] Thus, the law still favored rural weeklies, as it had in 1851. The 1962 act also dropped the long-standing requirement that a periodical enjoying in-county rates had to be printed, at least in part, in the county of publication. This accommodated an increasingly common practice in rural publishing -- printing the paper at a centralized plant, often one outside the county.[73]

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[66] Cong. Rec., Sept. 27, 1962, p. 20999.

[67] Ibid., Sept. 26, 1962, p. 20819.

[68] Postal Rate Revision of 1962: Hearings on H.R. 7927 before the Senate Comm. on Post Office and Civil Service, 87th Cong., 1st sess. (1962), p. 127; "Small Papers Fear P.O. Rate Increase," Editor & Publisher, March 31, 1962, p. 126.

[69] Ibid.

[70] Letter from National Education Association to Washington Post reprinted in Cong. Rec., Sept. 27, 1962, p. 20999.

[71] "Small Papers Fear P.O. Rate Increase," Editor & Publisher, p. 126.

This last provision, intended to help small papers printed outside their county, also proved beneficial to large magazines. In 1966, Postmaster General Lawrence O'Brien reported that magazines with large circulations used their reentry privilege to qualify for the in-county rate. By trucking magazines to cities where they had second-class permits, publishers avoided zone rates on the advertising portions of their publications.[74] The Johnson administration moved to eliminate this unforeseen use of preferred in-county rates.[75] In 1967, Congress amended the law to restrict the low per copy in-county rates to the office of original entry. The 1967 law also clarified the situation for independent cities not part of any county. And, finally, the 1967 law raised in-county rates in three annual steps up to 1 1/5 cents a pound or 1/5 cent per copy.[76]

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[72] If issued more than once a week, the rate was 1 cent per copy; if issued less often, it was 1 cent a copy for publications of 2 ounces or less, and 2 cents a copy for heavier periodicals. Act of Oct. 11, 1962, 76 Stat. 832-833, 836.

[73] Ibid.; Cong. Rec., Jan. 23, 1962, p. 771. See also Sim, The Grass Roots Press, pp. 145-147.

[74] 1967 PMG Annual Report 99; "P.O. Suggests Higher Rates for Non-Profit Mailers," Advertising Age, April 25, 1966, pp. 1, 178.

[75] "House Postal Bill Harsh on News, Non-Profit Books," Advertising Age, July 31, 1967, pp. 1, 8.

The House report recommending these changes provides a revealing glimpse of in-county mailings on the eve of the Reorganization Act. The 1.5 billion pieces mailed in fiscal 1966 yielded only .7 cent per piece, but cost the department 5.3 cents. In other words, revenues covered "about 13 percent of fully allocated costs." Use of the preferred in-county rates continued to grow despite a shrinking rural population because suburban community papers increasingly took advantage of them. "[I]n-county rates are being turned to different ends than Congress envisioned more than a century ago when in-county rates were first established," the House report concluded. "While these rates were intended to help the rural press, volume growth is taking place largely around metropolitan areas."[77]

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[76] Act of Dec. 16, 1967, 81 Stat. 613, 616-617; Fed. Reg., Jan. 3, 1968, p. 26; Aug. 31, 1968, p. 12280.

[77] H.R. Rep. No. 722, 90th Cong., 1st sess. (1967), p. 31.

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Second- and Third-Class Rates for Nonprofit Organizations

The special postal rates given certain nonprofit organizations have proven controversial for two reasons: first, some groups enjoying these low rates compete, at least in part, with commercial enterprises; and second, applying congressional standards of eligibility has confounded the post office. Part of the confusion surrounding these preferred subclasses stems from the indirect method of their enactment; both nonprofit rates were added as exemptions to general rate increases, the second-class in 1917, and the third-class in 1951. Congress never clearly explained why some nonprofit organizations were favored with, and others excluded from, enjoyment of these reduced rates. Complicating matters, eligibility grew haphazardly as policymakers added one or another group or class of publications to the preferred rates.

NONPROFIT PUBLICATIONS AND THE SECOND-CLASS MAILS BEFORE 1917

Although Congress did not give a special rate to publications of nonprofit groups until 1917, the battle over their right to use the second-class mails dates from 1879.

Fraternal Publications in the Mails

After passage of the Mail Classification Act of 1879, the Post Office Department developed the paid subscriber rule as a criterion for admission to the low second-class. The rule derived from the law's fourth condition:

> Fourth. It [the publication] must be originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts or some special industry, and having a legitimate list of subscribers; provided, however, That nothing herein contained shall be so construed as to admit to the second class rate regular publications designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates.[1]

The paid subscriber rule meant that most of a periodical's subscribers had to request and pay for the publication. If a large portion of a newspaper's or magazine's circulation was simply given away, the department deemed it "designed primarily for advertising purposes" and thus ineligible for second-class rates.[2]

The rule, developed mainly to keep advertising circulars from the low second-class rates, also excluded publications issued by organizations for their members. In the 1880s and 1890s, the post office began ruling that publications of fraternal organizations usually failed to qualify for second-class rates. Such journals belonged in the third-class because they were "devoted entirely and exclusively to advertising the private interests of the owners. . . ."[3] Furthermore, the assistant attorney general for the Post Office Department found subscription to be a "compulsory collection and can not be considered as constituting 'a legitimate list of subscribers' within the meaning of the law."[4] But fraternal groups specifically designating a portion of their members' annual dues for a subscription qualified for second-class rates.[5]

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[1] Act of March 3, 1879, 20 Stat. 359.

[2] For details on the origins of this rule, see Richard B. Kielbowicz, "Development of the Paid Subscriber Rule in Second-Class Mail," Report prepared for the U.S. Postal Rate Commission in the Tri-Parish Journal Case (Docket C85-2), Aug. 16, 1985.

At the behest of some of the affected organizations, Congress in 1894 added language to the postal law that evolved during the next quarter of a century into the nonprofit subclass. The law admitted to the second class those publications issued

> under the auspices of a benevolent or fraternal society or order organized under the lodge system and having a bona fide membership of not less than one thousand persons or by a regularly incorporated institution of learning or by or under the auspices of a trades union and all publications of strictly professional, literary, historical, or scientific societies including the bulletins issued by State boards of health. . .[6]

The law stipulated that the publications had "to further the objects and purposes of such society" -- language that later proved crucial in determining eligibility.[7]

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[3] 1 Op. Asst. Att'y Gen. P.O. Dep't 882-883 (Nov. 10, 1883).

[4] 2 Op. Asst. Att'y Gen. P.O. Dep't 961 (Oct. 15, 1891); see also 2 Op. Asst. Att'y Gen. P.O. Dep't 749-751 (Nov. 8, 1889); and 1893 Postal Laws and Regulations 117.

[5] 2 Op. Asst. Att'y Gen. P.O. Dep't 806-807 (Feb. 25, 1890).

[6] Act of July 16, 1894, 28 Stat. 104, 105.

The debate over this law suggests that Congress intended to reverse postal rulings, an unusual move as legislation at this time usually ratified the department's administrative decisions. Legislation that began with a limited purpose -- to admit publications of fraternal societies to the second-class privilege -- ended by adding the publications of a variety of groups. The law prevented strict application of the paid subscriber rule to such periodicals, and determined that publications of organizations with specialized interests had sufficient "public character" to qualify for second-class rates.[8] Postmaster General Wilson S. Bissell opposed this extension of the privilege, arguing that "everything, in a word, that is of an advertising character or calculated to help the society, or order, or institution -- could come in." He predicted that much general advertising matter, then mailed at 8 cents a pound, would work its way into the one-cent-a-pound second class.[9]

Eligibility of Organizations' Periodicals

Administering the 1894 law saddled the post office with many of the responsibilities it faces today in applying the nonprofit second-class rate. The 1894 law exempted specified types of publications from adherence to the paid subscriber rule. The department feared that this relaxation of the rule, which had been developed to keep third-class material from getting second-class rates, would enable more advertising to qualify for the lowest postage.

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[7] Ibid.

[8] Cong. Rec., April 5, 1894, p. 3488; for details on the legislative history of this law, see 5 Op. Asst. Att'y Gen. P.O. Dep't 214-221 (July 27, 1909).

[9] Cong. Rec., April 5, 1894, p. 3489; April 24, p. 4047.

According to the post office, some of the organizations used their exemption from the paid subscriber rule to promote their own financial interests. The postmasters general complained in 1894 and 1901 that benevolent societies used the second-class mails to sell insurance in ways that would subject most periodicals to third-class rates as advertising circulars.[10] Fraternal associations conceded during the 1906 Penrose-Overstreet hearings that their groups "conduct life, health, and accident insurance on the cooperative plan. . . . Many of these fraternities provide other benefits and charities and none of them is operated for profit."[11]

The post office and commercial publishers also charged that these types of publications carried excessive amounts of advertising. For example, a representative of the American Newspaper Publishers Association claimed that some groups mailed advertising-filled sample copies to nonsubscribers; one, the Modern Woodsman, mailed 8 million copies in 1901.[12] ANPA, of course, regarded these publications as competitors for advertising. The assistant postmaster of New York

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[10] 1894 PMG Annual Report 481; 1901 PMG Annual Report 772-786.

[11] Report of the Postal Commission Authorized by Congress to Make Inquiry Regarding Second-Class Mail Matter with Hearings, 59th Cong., 2d sess. (1906), p. 304.

[12] Ibid., p. 165.

City suggested that publications devoted to public service should be entitled to second-class rates only if their advertising related directly to their purpose.[13]

Representing the department, Third Assistant Postmaster General Edwin C. Madden told the commission that "We have great difficulty in determining what is a benevolent or fraternal society; what is a professional society; what is a historical society, for every man and every organization wants to get the second-class rates."[14] The department had ruled that the American Library Association was a professional society because it promoted "bibliothetical science" and was nonprofit;[15] a free public library, in contrast, was not strictly literary as prescribed by the law, and therefore could not mail its publications at second-class rates.[16] In 1908, the department rejected the second-class mailing application of the Journal of the American Bankers' Association of New York because it was a business, not a professional, society. The special counsel for the post office ruled that the association promoted the financial interests of bankers.[17]

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[13] Ibid., p. 196.

[14] Ibid., p. 46.

[15] 4 Op. Asst. Att'y Gen. P.O. Dep't 102-104 (March 13, 1906).

[16] 5 Op. Asst. Att'y Gen. P.O. Dep't 20-21 (Aug. 18, 1908); see also 112-113 (Dec. 9, 1908). The department ruled that a local Chautauqua society failed to qualify as an institution of learning within the meaning of the 1894 act, but seemed to be both a literary and scientific society; 4 Op. Asst. Att'y Gen. P.O. Dep't 148-151 (May 9, 1906); that the Women's Catholic Forester was issued by a nonprofit fraternal organization that had "initiations, ritual, regalia, and emblems"; 4 Op. Asst. Att'y Gen. P.O. Dep't 662-663 (Nov. 11, 1907). Such ritual is still considered today in determining eligibility; see Domestic Mail Manual 623.238.

Permitting Advertisements: The 1912 Law

A 1912 act tried to resolve one uncertainty -- the acceptability of advertisements in the periodicals of these organizations. Under the 1894 law, qualified groups could mail at second-class rates provided "That such matter shall be originated and published to further the objects and purposes of such society. . . ."[18] The post office construed this language to deny second-class privileges to publications "containing advertisements in the interest of other persons or concerns than the society or trades union or institution of learning which the paper represents. . . ."[19] Using this test, the department denied second-class mailing privileges in 1911 to the publication of a benevolent society because its members made a profit from its publishing program.[20] The National Fraternal Congress implored Congress to allow its supposedly nonprofit publications to carry ads on the same basis as "the commercial press" since the advertisements generated funds for charitable works.[21]

Opposing this move, the postmaster general underscored an inherent contradiction in the two laws governing fraternal, benevolent and similar publications. "[O]n the one hand, the papers are compelled to be of an advertising ('to further their own objects and purposes') character; and on the other, they are not ('must not be designed or published primarily for advertising purposes') to be of such character."[22] The first quote, from the 1894 law, admitted fraternal publications to the second-class rate; the second provision, from the 1879 law, denied second-class rates to publications issued by parties who had a special interest in the product or service being advertised.

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[17] 5 Op. Asst. Att'y Gen. P.O. Dep't 50-54 (Oct. 22, 1908).

[18] 28 Stat. 105.

[19] H.R. Doc. No. 559, 62d Cong., 2d sess. (1912), p. 61.

[20] 5 Op. Asst. Att'y Gen. P.O. Dep't 493-502 (Nov. 8, 1911).

[21] Cong. Rec., March 8, 1910, pp. 2913-2914.

Another aspect of the debate leading to the 1912 law dealt with the uncertain postal status of professional, scientific, and medical journals. The problem, according to a Senate report, was that such journals "can not, according to present [post office] rulings, carry any matter, either advertising or reading matter, that it (sic) is not directly intended to further the object and purposes of the order. . . ."[23] Many journals admitted to the second-class mails had been removed when postal authorities began cracking down on publications carrying ads not directly related to the sponsoring organizations' activities. The Senate committee endorsed the arguments of those scientists, doctors, and engineers who claimed that specialized advertising was a public service to professionals and yielded revenues that helped sustain worthy nonprofit publications.[24]

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[22] S. Doc. No. 648, 61st Cong., 2d sess. (1910), p. 4; see also S. Doc. No. 815, 61st Cong., 3rd sess. (1911).

[23] Cong. Rec., March 3, 1911, p. 4099.

The 1912 law tried to promote these publications while preventing commercial interests from exploiting their special postal status. The act added a few new groups to the preferred rates, but more significantly, it stipulated that such periodicals

> shall have the right to carry advertising matter, whether such matter pertains to such benevolent or fraternal societies or orders, trades unions, strictly professional, literary, historical, or scientific societies, or to other persons, institutions, or concerns; but such periodical publications, hereby permitted to carry advertising matter, must not be designed or published primarily for advertising purposes, and shall be originated and published to further the objects and purposes of such benevolent or fraternal societies. . . .[25]

As a further protection against abuse, the law provided that these societies could not mail more than 10 percent of their circulation as sample copies.[26] This provision addressed a concern of postal authorities that these organizations had mailed many sample copies of their periodicals, a tactic sometimes used to get third-class advertising circulars into the less expensive second-class mails.

ORIGINS OF THE SECOND-CLASS NONPROFIT RATE

The 1894 and 1912 laws did not establish special rates, but they did anticipate the policy of treating certain kinds of organizations preferentially. Congress went a step further in 1917, creating special rates for some of the groups already admitted to the second-class mails as long as they operated on a nonprofit basis. The legislative history of this provision in the War Revenue Act of 1917 is rather spare, for debate over the commercial press overshadowed all other considerations.

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[24] Ibid., p. 4101.

[25] Act of Aug. 24, 1912, 37 Stat. 539, 551.

[26] Ibid.

The law introduced a new principle -- zoned rates on advertising portions -- in assessing postage on newspapers and magazines, but exempted publications of prescribed nonprofit groups. That the act emerged from the House Ways and Means Committee, rather than a post office committee, may explain in part its revolutionary treatment of commercial publishers.[27] The law established a new means of figuring postage on second-class matter: the quantity of advertising and the distance of delivery determined what a publication paid. Under the act, rates rose in four steps between 1918 and 1921 until they reached 1.5 cents on the reading portion and from 2 to 10 cents on the advertising matter. Some in Congress expressed delight that a wartime emergency measure had given them the opportunity to raise second-class rates after years of hearings and special commissions had failed to do so. (Second-class rates had remained at 1 cent a pound since 1885.)[28]

Assessing postage partly by the amount of advertising signaled Congress's desire to make rates reflect, at least in part, the private benefits publishers derived from using the mails. The

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[27] *Cong. Rec.*, May 10, 1917, appendix, p. 483.

[28] See Irving I. Raines, "The Second-Class Postal Rate Controversy," (Unpublished Ph.D. dissertation, University of Illinois, 1952) for a review of the debate on the zoning provisions. He does not mention the creation of the nonprofit subclass.

Post Office Department, and some in Congress, had long argued that subsidizing the circulation of advertising-filled periodicals yielded some benefits for society, but more directly enriched publishers. Under the zone system, those who derived the greatest financial advantage from the use of low-cost mails paid somewhat in proportion to the rewards they reaped. Remarks of Majority Leader Claude Kitchin, Democrat from North Carolina, reflected the tenor of these debates; he decried the "clear, legalized robbery by them [publishers] of the people of $89,000,000" in postal subsidies.[29]

At the same time, Congress decided that nonprofit organizations should be exempt from the policy that assessed postage by the amount of advertising. Hence, these periodicals came to be called "exempt publications" or "exempt second-class matter." Specifically, the law provided

> That in the case of newspapers and periodicals entitled to be entered as second-class matter and maintained by and in the interest of religious, educational, scientific, philanthropic, agricultural, labor, or fraternal organizations or associations, not organized for profit and none of the net income of which inures to the benefit of any private stockholder or individual, the second-class postage rates shall be, irrespective of the zone in which delivered . . . 1 1/8 cents a pound or fraction thereof. . . .[30]

The rates prescribed by the act, effective July 1, 1918, were scheduled to rise to 1 1/4 cents a pound one year later. Furthermore, the act required that organizations using this subclass provide satisfactory evidence that they indeed qualified as nonprofit.[31]

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[29] Cong. Rec., May 10, 1917, appendix, p. 489; much of Kitchin's speech berated the press and some of his most scalding observations were applauded.

[30] Act of Oct. 3, 1917, 40 Stat. 300, 328.

Congressional debates shed a little light on the rationale for selecting some types of organizations while excluding others. To expedite consideration, the Ways and Means Committee skipped general public hearings, though some commercial publishers presented their arguments in informal conversations.[32] A member of the House Ways and Means Committee observed that the Christian Herald, conducted for profit, would be subjected to the proposed zoned rates. If, however, a religious, educational or similar publication made a profit for use by the sponsoring organization, it could still pass at the exempt rates.[33] One opponent of the bill predicted that the term educational would be construed to cover many types of publications. Furthermore, he was troubled that two members of the Ways and Means Committee told him that National Geographic would not qualify for the nonprofit rates as the journal of an educational organization.[34] The House added scientific groups to the subclass, and specified that periodicals issued by commercial printers on behalf of nonprofit organizations would be entitled to the reduced rates.[35]

The Senate version of the bill did not originally confer a special rate on nonprofit publications. Unlike the House, where no representative spoke against the special subclass, a few Senators proposed that rate increases apply to all periodicals.[36] Most, however, were sympathetic. An amendment approved by the Senate, but absent from the law as finally passed, would have put all farm and religious publications -- profit and nonprofit -- in the special subclass. None earned much of a profit, the sponsor argued, and wartime inflation in the price of paper and labor justified such a subvention of worthy publications.[37] The Senate eventually agreed to the House version.[38]

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[31] Ibid.

[32] Cong. Rec., May 10, 1917, appendix, p. 492.

[33] Ibid., May 12, 1917, pp. 2222-2223.

[34] Ibid., May 15, 1917, p. 2354.

[35] Ibid., May 22, 1917, pp. 2773, 2775.

Except for mail matter enjoying free mailing privileges, the nonprofit second-class rate was the lowest in the schedule of postage. Not surprisingly, it quickly presented postal authorities with problems of interpretation. Shortly after the law took effect, the post office had to decide whether the Christian Science Monitor and The Deseret News deserved the special rate. The proprietors of the Deseret News reported that the paper was controlled by the Mormon Church, paid no dividends, and applied any profits to lessen the cost of church literature. The assistant postmaster general, reviewing the legislative history of the 1917 act, declared these papers to be essentially metropolitan dailies.[39] Seven years after passage of the 1917 act, the Postal Laws and Regulations provided no criteria beyond that in the statute to judge eligibility.[40]

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[36] Ibid., Aug. 27, 1917, p. 6356.

[37] Ibid., Aug. 28, 1917, pp. 6399-6401.

[38] Ibid., Oct. 1, 1917, p. 7572.

[39] 6 Op. Solic. P.O. Dep't 638-641 (Aug. 16, 1918) and 665-668 (Oct. 14, 1918).

In short, the War Revenue Act of 1917 permitted all institutional publications admitted to the general second-class mails by the 1894 and 1912 laws to retain their regular second-class privilege. But the law moved some of these publications (and added a couple) to a more preferential status, exempting postage that would otherwise be charged on the advertising portions.

PROTECTING THE PREFERRED RATE THROUGH THE 1940S

The first review of the new subclass came in the mid-1920s, when Congress labored to increase revenues in order to cover pay raises for postal employees. During the next two decades, the preferred postage prompted occasional, though rarely serious, calls for rate hikes.

1920s Campaign to Adjust Rates

Still smarting from the imposition of the zone system, commercial newspaper and magazine publishers mobilized in the 1920s to roll back rates scheduled to rise in four installments. About the same time, policymakers sought to raise postal wages. Together, these pressures on postal receipts and expenditures triggered a series of proceedings during the mid-1920s, including the first major review of the preferred nonprofit rate.

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[40] 1924 Postal Laws and Regulations 166.

The post office reported that nearly 6,000 publications were using the preferred rate several years after it took effect, suggesting that the department construed the qualifications liberally. The department carried 125,043,125 pounds of exempt matter, from which it collected $1,630,362, during the fiscal year ending on June 30, 1925. The preferred rate saved nonprofit publications about $1 million a year, according to a crude estimate made by the post office. Religious and educational organizations issued most of the exempt publications.[41]

During these years, Senator George H. Moses, a Republican from New Hampshire, repeatedly urged that all publications in the "already highly preferential second-class postal rates" should be treated equally. Some exempt publications, he observed, were 40 percent advertising -- advertising "sought in competition with all newspapers and periodicals of all classes. . . ." Moreover, much of the advertising had nothing to do with the purpose of the sponsoring organization. Finally, though such publications did not produce profits for stockholders, "every one of them exists for the purpose of profit in the payment of very considerable salaries to those who have to do with their editorial management and publication," he wrote. "They exist . . . in a very real sense for the purpose of making money."[42]

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[41] _Postal Rates: Hearings on S. 3674 before the Special Joint Subcomm. on Postal Rates_, 68th Cong., 1st sess. (1925), p. 1254. A list of all exempt publications appears on pp. 1160-1228 of the hearings.

Those supporting low rates for nonprofit groups acknowledged that the publications often made profits. They pointed out, however, that the profits "are used to take care of homes for the aged or homes for children, for the relief of persons who would otherwise be upon the public and a public charge."[43] To grant this mailing privilege, another senator explained, the post office had to find that profit "goes into the service of religion, if it be a religious publication or that it goes into the service of education, if it be an educational publication."[44] To prevent possible abuses -- and to allay concerns expressed during the debates -- one senator proposed that "these special postal rates shall not apply to any such periodical which pays excessive salaries to its editors, managers, or employees. . . ." He set $12,000 as the ceiling, and would have required that publishers applying for the low rate submit evidence to the postmaster general on the salaries they paid.[45] This amendment was defeated.

The nonprofit subclass survived, but in 1925 Congress raised the rates from 1 1/4 to 1 1/2 cents a pound.[46] In the next few years, Congress resisted attempts to roll back the rates to 1 1/4 cents or even 1 cent a pound.[47] Rates for preferred mailers, set at 1 1/2 cents a pound in 1925, remained stable for 38 years. In other measures of stability, the postal regulations governing admission to the preferred subclass showed no substantial change for these years and decisions on eligibility were still centralized in Washington, D.C.[48]

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[42] "Should Religious Publications Retain Privileged Rate Status?" Congressional Digest, February 1925, p. 166; see also Cong. Rec., Feb. 14, 1927, pp. 3664-3665.

[43] Ibid.

[44] Ibid., Jan. 22, 1925, p. 2506.

[45] Ibid., Jan. 27, 1925, pp. 2506-2508.

[46] Ibid., Jan. 29, 1925, p. 2618; Feb. 25, p. 4651; New York Times, Jan. 28, 1925, p. 5; Act of Feb. 28, 1925, 43 Stat. 1066.

The Heiss Report, 1946

Although the nonprofit subclass saw few changes in the 1930s and '40s, it did come under the scrutiny of a special consultant to the post office. Charles A. Heiss, former comptroller of a large corporation, prepared the first independent analysis of second-class policy and rate structure since the 1911 Hughes Commission. His 1946 report, studying all aspects of second-class mail, reviewed how exempt publications used the mails and recommended some changes in eligibility. The 4,500 exempt publications constituted nearly one-fifth of all second-class permit holders.[49] The post office delivered about 800 million pieces of preferred publications for a little more than $2 million in revenues. The estimated cost was $20 million. Had the advertising portions been charged zone rates, the department would have collected an additional $350,000 a year, Heiss estimated.[50]

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[47] Postal Rates: Hearings on S. 3674 before the Special Joint Subcomm. on Postal Rates, 68th Cong., 1st sess. (1925), pp. 378-381; Cong. Rec., March 1, 1927, p. 5277.

[48] Compare 1924 Postal Laws and Regulations 166-167 to 1948 Postal Laws and Regulations 209-210.

[49] In September 1944, religious organizations issued 1,690 exempt publications; educational, 1,606; fraternal, 378; scientific, 228; agricultural, 201; labor, 114; miscellaneous, 113; philanthropic, 104; and news agents, 66. Charles A. Heiss, Report on Second-Class Mail (Washington, D.C.: Government Printing Office, 1946), pp. 25-28.

Heiss offered several recommendations governing eligibility. First, he observed, some of the exempt publications were conducted partly or largely for the benefit of the groups operating them. For example, "[f]raternal insurance societies may in fact be large 'business' concerns, and while describing themselves as fraternal or benevolent their dealings with members are on a strictly contract basis," he found. "In these and similar organizations the officers or promoters may continue in charge year after year at substantial emolument." Heiss thought the exempt rate should be extended only to those organizations that provided specific benefits for other than their members. This meant withdrawing the exempt rate from the publications of agricultural, labor, fraternal and scientific groups. He explained that "[a]gricultural publications distributed by organizations of farmers, even though such organizations may not make a 'profit,' are for the benefit and financial advantage of the members making up that group, and only indirectly for the public as a whole." Most labor organizations worked to improve the lot of members, scientific publications immediately benefited certain professionals, and so forth, Heiss reasoned. "[W]hen the activity is primarily for the advantage of the particular groups or persons concerned," he concluded, "it is not apparent that the Postal Service should provide assistance to them at the expense of other mail users or from public funds as distinguished from other groups equally worthy."[51]

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[50] Ibid.

Other recommendations involved limiting advertising and setting a minimum per piece rate. Heiss suggested that no exempt periodical should consist of more than 50 percent advertising. In addition, because these publications were smaller and generally traveled farther than regular second-class matter, Heiss thought they should pay a minimum charge per piece to reflect the costs of handling.[52] The Heiss report directed attention to the troubled rate structures and uncertain policies of the second-class mails, but prompted no changes for exempt publications.

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[51] *Ibid.*, pp. 26-28; Heiss wrote:

> If the policy of granting preferential treatment to certain 'non-profit' publications is to be continued, it should preferably not be granted to any publication with an advertising content in excess of, say, 50 per cent and be confined to the following:
>
> Religious publications;
> Publications of definitely philanthropic and charitable bodies organized primarily for the purpose of extending such service beyond their own organizations;
> Official publications and bulletins of educational institutions (other than of a strictly private character) for which the authorities of the institution assume full responsibility, not including those of students or any which are not a definite part of the educational program; and
> Official bulletins and publications of State boards or departments of health, public charities, corrections, and agriculture.

[52] *Ibid*.

ORIGINS OF THE THIRD-CLASS NONPROFIT RATE

The origins of the second- and third-class nonprofit rates bear a striking resemblance. In 1951 Congress exempted bulk mailings by nonprofit organizations from a rate increase applied to commercial mailers, much as it had exempted nonprofit publications from a rate hike applied to commercial publishers in 1917. The preferred third-class rates enacted in 1951 marked the culmination of proceedings initiated two years earlier. Salary increases in 1948 and 1949 exacerbated the postal deficit, which jumped from $308 million in 1948 to $551 million in 1949.[53] To reduce the shortfall, the post office proposed substantial rate increases in most classes, and Congress considered them in lengthy hearings.

The 1949 and 1950 Hearings

The idea of exempting nonprofit organizations from third-class rate increases first arose in congressional hearings in the spring of 1949. Most nonprofit groups that testified expressed concern about proposed across-the-board increases in second-class postage. The Elks and Veterans of Foreign Wars, just two of many such groups appearing before Senate and House post office committees, argued that increased postage on their organizations' magazines would reduce funds otherwise used for public service works.[54]

Other groups, especially those dependent on fundraising by mail, strenuously lobbied against the proposed hikes in third-class rates. Philip G. Rettig, director of research services for the National Society for Crippled Children and Adults, made perhaps the most compelling presentation to Congress on behalf of exempting certain groups from the increases. Rettig asserted that any increase in third-class postage would undercut services provided for crippled children and adults. The society received almost all of its annual funding from responses to 25 million appeal letters it mailed as part of its Easter Seal campaign. The proposed higher bulk rates would add $250,000 to its postage bill, Rettig claimed. "It is not enough for us to say so flatly that our postage costs would be increased," he told the Senate committee.

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[53] 1948 PMG Annual Report 1; 1949 PMG Annual Report 2.

[54] Adjustment of Postal Rates, Part 2: Hearings on S. 1103 before the Senate Comm. on Post Office and Civil Service, 81st Cong., 1st sess. (1949), pp. 477-481, pp. 236-239.

> It is more real for us to say that crippled children and adults throughout the land could be deprived of $250,000 in service now available to them. This $250,000 is the equivalent of the total annual salary of some 90 physical therapists, or 90 occupational therapists, or 90 speech therapists. We are confident that it is not the intent of this committee or of Congress to deprive thousands and thousands of children and adults of needed care.[55]

To underscore his point, Rettig described the services that would be curtailed in several states because of the added postage costs. In West Virginia, for example, $1,300 in extra postage "could deprive crippled children . . . of some 450 camping days."[56]

Rettig also anticipated some of the policy and administrative concerns of Congress. He insisted that none of the third-class mailings of his society crossed state borders, explaining that solicitations, handled by state and local chapters, did not travel far. Therefore, such third-class matter cost less to transport than most other bulk mail, he contended. Addressing the problem of eligibility, Rettig suggested that only charitable and philanthropic organizations be entitled to a preferred third-class rate. "I mean charitable organizations here in a somewhat restricted sense," he elaborated. "I do not mean mere nonprofit corporations." Organizations to which individuals could make tax-deductible contributions would qualify, he suggested. In fact, in response to questioning, Rettig said the Internal Revenue Service "does quite an effective job of ascertaining the charitable status of an organization."[57]

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[55] *Ibid.*, p. 702.

[56] *Ibid.*

During the 1950 hearings, other organizations dependent on raising funds through mail solicitations echoed the arguments of the National Society for Crippled Children and Adults. The National Foundation for Infantile Paralysis, sponsor of the March of Dimes, called on Congress to "exempt the philanthropic organizations which are exempted under the Internal Revenue Act . . . from the increase to a cent and a half in this third-class mailing."[58] The director of the

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[57] Postal Rate Increases, Vol. 2: Third - and Fourth-Class Mail and Special Services: Hearings on H.R. 2945 before the House Comm. on Post Office and Civil Service, 81st Cong., 1st sess. (1949), pp. 1051-1052; see also his testimony and the remarks of E. Urner Goodman, representing several organizations, in the Senate hearings above, note 54, pp. 203-210.

[58] Postal Rate Increases: Hearings on H.R. 2945 before the Senate Comm. on Post Office and Civil Service, 81st Cong., 2d sess. (1950), pp. 184-185.

National Tuberculosis Association's Christmas Seal campaign told the Senate committee that increased postage would force a curtailment of services.[59] The Disabled American Veterans joined the effort to exempt philanthropic organizations from increases in bulk mailing rates.[60]

The 1951 Law

After two years of hearings and debates, the Eighty-First Congress adjourned in January 1951 without altering postage. With barely a pause, however, the Eighty-Second Congress took up the matter. Most of the organizations that had testified in 1949 and 1950 appeared again before the post office committees.

The Senate committee gave the nonprofit groups a warm reception. After hearing testimony on behalf of 21 national voluntary health and welfare organizations, the committee chairman said, "[W]e ought not to do anything that would handicap any of the organizations you mentioned here."[61] As before, supporters argued (1) that these nonprofit groups devoted any income to their charitable activities; (2) that the organizations might have to curtail some of their services to cover higher postal costs while the post office would gain little revenue; (3) that these groups were helping people who would otherwise be forced to depend on government aid; and (4) that, in the midst of the Korean and Cold Wars, voluntary associations had added responsibilities and expenses.[62] The House committee was less favorably inclined. The chairman, for example, saw "justification for giving a special rate to these non-profit, religious, scientific, educational and agricultural and labor publications under second-class matter because Congress adopted that policy many years ago." But he anticipated problems from the creation of a new differential between commercial and nonprofit mailers in the third-class.[63]

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[59] Ibid., pp. 188-189.

[60] Ibid., pp. 189-190.

[61] Adjustment of Postal Rates: Hearings on S. 1046, 1335, 1369 before the Senate Comm. on Post Office and Civil Service, 82d Cong., 1st sess. (1951), p. 150.

Not all the groups that stood to benefit from the preferred rates agreed with presentations made during the hearings. Christian Century lambasted "[f]ive witnesses representing 38 Protestant church-owned publishing houses" that testified before the House committee. "They want the subsidy extended!" the magazine exclaimed in reference to the preferred second-class rates. "Separation of church and state? Apparently the Protestant publishers have never heard of it. Religious liberty? Not when it interferes with profits." Christian Century claimed that the witnesses did not represent the entire religious community, and speculated that such government subvention might influence religious magazines.[64]

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[62] Ibid.; see, especially, the testimony of E. Urner Goodman, representing 21 groups, pp. 139-150; the Elks, pp. 166-173; the Veterans of Foreign Wars, pp. 227-230; various religious magazines, pp. 438-443; and the National Society for Crippled Children and Adults, pp. 479-492.

[63] Postal Rate Revision: Hearings on H.R. 1046 and H.R. 2982 before the House Comm. on Post Office and Civil Service, 82d Cong., 1st sess. (1951), pp. 464-465. For the testimony of various groups on the need for exemptions from second- and third-class postage increases, see, e.g. ibid, pp. 454-466, 518-527, 559-563.

The original House bill failed to protect publications of nonprofit organizations, but the House post office committee recommended continuing the exemptions and adding veterans' organizations. During the House hearings, witnesses offered 38 amendments to exempt their mailings from rate increases.[65] The House report, however, did not shield nonprofit organizations from the proposed increase in third-class bulk mailings.[66] The Senate report exempted various nonprofit organizations from increases in both second- and third-class rates. Like the House report, the Senate version added veterans' organizations, but also included the mailings of service clubs.[67]

Most references to the preferred rates during the floor debate were incidental parts of more general discussions. Senator Russell B. Long of Louisiana, for example, sought to protect nonprofit organizations from a proposed doubling of the rate on postal cards. (This would have created a preferred first-class rate.) He argued that subsidies were justified for charitable organizations. An IRS determination that an organization qualified as tax exempt "is a sufficient test," he stated.[68] Long's amendment failed. One representative wondered why the publications of professional societies, which disseminated educational information, were not included in the preferred subclass. A member of the House post office committee responded that some might well qualify under the educational category.[69]

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[64] "No Mail Subsidies for Church Press!" Christian Century, March 28, 1951, pp. 388-389; see also "Southern Baptists Oppose Postal Subsidies," ibid., Oct. 14, 1953, pp. 1155-1156; "House Coddles Religious Press," ibid., Feb. 24, 1954, pp. 228-229.

[65] H.R. Rep. No. 547, 82d Cong., 1st sess. (1951), pp. 1-2; see also Cong. Rec., Sept. 18, 1951, pp. 11561-11562.

[66] Ibid., Sept. 18, 1951, p. 11555.

[67] Ibid., Sept. 6, 1951, p. 10980.

A conference committee resolved the differences between the House and Senate bills. The conferees added veterans' organizations but deleted service clubs and temperance groups from the Senate version, emphasizing that many temperance publications would qualify anyway as educational. The conferees adopted the Senate language that exempted certain nonprofit organizations from increases in third-class rates; the prescribed types of organizations were identical to those in the preferred second-class.[70] The House and Senate accepted the conference report with virtually no debate, though one representative observed that the national magazines of some fraternal and veterans' organizations carried large amounts of advertising.[71]

Where the regular per piece minimum charge for bulk mailings rose to 1 1/2 cents, that for preferred mailers remained at 1 cent.[72] The rules issued to implement the act specified that "These special rates are not applicable where mailings are made jointly under arrangements with contractors or others for the latter's profits."[73] Because the 1951 law exempted the prescribed types of organizations from general third-class rate increases, the preferred groups also gained a slight advantage in bulk mailings of books, catalogues, seeds, cuttings and the like. Although the 1951 law left the special second-class rate largely untouched, the publications of nonprofit organizations were subject to the minimum 1/8 cent per piece rate assessed all second-class mail except newspapers enjoying free-in-county circulation.[74]

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[68] Ibid., Sept. 7, 1951, pp. 11024-11025, 11028, 11041-11043.

[69] Ibid., Sept. 18, 1951, p. 11570.

[70] Ibid., Oct. 19, 1951, pp. 13581, 13585.

[71] Ibid., pp. 13524-13525, 13587-13588.

[72] Act of Oct. 30, 1951, 65 Stat. 672-674.

ADMINISTRATION OF THE PREFERRED RATES

The continuation of the special second-class rates and the creation of a preferred bulk mailing rate aggravated the problem of determining eligibility. In fact, the statute exempting selected types of nonprofit organizations from the increase in bulk mailing rates provided no guidelines nor did it create a mechanism for deciding eligibility. The Post Office Department was left to develop criteria.

Barely 18 months after Congress created the preferred third-class rate, the department had processed 38,000 applications, denied

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[73] *Fed. Reg.*, Dec. 28, 1951, p. 13092.

[74] 65 *Stat.* 672-674; *Fed. Reg.*, Dec. 28, 1951, p. 13092.

6,250, and was still receiving several hundred a week.[75] A post office consultant estimated that the department lost about $12 million a year on the special third-class privilege, of which $3.6 million represented the difference between regular and preferred rates.[76]

Because the statute failed to specify how to determine admission to the special third-class, the Post Office Department simply adapted the procedure that it used for the reduced second-class rates. An organization gave the local postmaster evidence that it was "not conducted for private profit and none of its net income inures to the benefit of any private stockholder or individual." Post office headquarters then rendered a decision.[77] For the second-class privilege, the number of exempt publications remained relatively stable, making it possible to maintain centralized decision-making.[78] Applications for the special third-class rate, however, swamped the post office, necessitating procedural changes. Beginning in 1957, local postmasters decided the eligibility of applicants for the privileged third-class rate, with appeals going to the Mail

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[75] _Authorizing Educational Films and Related Material to be Transmitted at Book Rates: Hearings on S. 971 before the Senate Comm. on Post Office and Civil Service_, 83rd Cong., 1st sess. (1953), p. 18.

[76] _Postal Rate Revision: Hearings on H.R. 6052 before the House Comm. on Post Office and Civil Service_, 83rd Cong., 1st sess. (1953), p. 125.

[77] _Fed. Reg._, Dec. 12, 1951, pp. 13092, 13094; Dec. 6, 1961, pp. 11543, 11547.

[78] A 1963 Circuit Court decision affirmed the post office's authority to approve or deny applications. _Christian Beacon v. U.S._, 322 F.2d 512 (3rd Cir. 1963).

Classification Division.[79] Later, to attain a more uniform application of the law, initial decision-making responsibility was shifted from the tens of thousands of local postmasters to the 62 postal service centers. Appeals from adverse decisions still went to the Classification and Special Services Division.[80]

Even so, postmasters at the postal service centers had few guidelines on which to base their decisions, a 1963 study found.[81] The Postal Manual listed the eligible types of organizations as well as some that did not qualify. Limited guidance came from the decisions rendered by the Classification and Special Services Division, typically letters from three to five sentences long. Decisions were based on the application form and supporting documentation, usually the organization's charter, by-laws, income tax exemption, bulletin and similar materials. In reviewing such evidence, the postmaster, or, if on appeal, the classification division, looked at two dimensions of eligibility -- the type of organization and its nonprofit status.

Primary Activity of the Organization

In the first years of administering the preferred third-class rates, the department apparently attached the greatest weight to whether an organization fit one of the specified categories.[82] Workable definitions proved elusive. As Postmaster General Arthur E. Summerfield told the House post office committee in 1953, "We probably need a little help from this committee in definitions as to what is educational and what is religious."[83] Earlier he had complained that "many nonprofit organizations not included in the groups designated by the law have applied for exemption."[84]

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[79] Fed. Reg., June 27, 1957, p. 4500.

[80] Fed. Reg., Feb. 15, 1962, p. 1417; Feb. 20, 1965, pp. 2313-2314.

[81] Neal S. McCoy, "Report on Preferential Second and Third-Class Postal Rates for Nonprofit Organizations," (Unpublished study submitted to the associate general counsel, Post Office Department, 1963.)

The educational category proved most troubling, and the department developed as a test whether the organization offered instruction through a pupil-teacher relationship.[85] For example, the department denied preferred rates to magazines of voluntary alumni associations, while giving them to similar publications sponsored directly by colleges and universities. Chiding the post office for drawing "an unnecessarily fine line in excluding such alumni associations from the privilege that Congress extended to nonprofit, educational organizations," the Senate post office committee in 1952 reported a bill to bring alumni magazines within the preferred rate, but it failed to pass.[86] Until 1955, the Division of Mail

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[82] S. Rep. No. 1086, 83d Cong., 2d sess. (1954), p. 182.

[83] Postal Rate Revision, Vol. 1: Statement and Testimony of the Postmaster General and Staff: Hearings on H.R. 6052 before the House Comm. on Post Office and Civil Service, 83rd Cong., 1st sess. (1953), p. 29.

[84] 1952 PMG Annual Report 62.

[85] S. Rep. No. 1086, 83rd Cong., 1st sess. (1954), p. 189.

[86] S. Rep. No. 1798, 82nd Cong., 2d sess. (1952), p. 2.

Classification disposed of most applications by determining whether the primary activity of the organization was religious, educational, and so forth.[87]

After five years' experience administering the special third-class rate, the Post Office Department generated a list of types of organizations that did not qualify even though they operated on a nonprofit basis:

> Automobile clubs; business leagues; chambers of commerce; citizens' and civic improvement associations; individuals; municipal, county, or State governmental bodies; mutual insurance associations; political organizations; service clubs such as Civitan, Kiwanis, Lions, Optimist, and Rotary; social and hobby clubs; and trade associations.[88]

This list reflected the variety of applicants seeking the preferred rates.

Nonprofit Status

The other test of eligibility focused on an applicant's nonprofit status. In the long run this probably proved more difficult to gauge, but, at the same time, more in tune with the legislative history of the 1951 law. As a report by the National Education Association observed, the 1951 law "seemed to be primarily concerned with making sure that exempt organizations were genuinely nonprofit rather than with the question of whether the organization was religious, or educational, or scientific in character and purpose."[89]

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[87] McCoy, "Report on Preferential Second and Third-Class Postal Rates for Nonprofit Organizations," p. 26.

[88] Fed. Reg., June 27, 1957, p. 4500; Aug. 4, 1959, p. 6231; Dec. 6, 1961, p. 11547.

A 1955 letter by Post Office Department Solicitor Abe McGregor Goff recommended discarding the primary activities test -- that is, whether an organization was primarily educational, scientific or the like. Instead, he advised that the post office defer to the Internal Revenue Service's decisions dealing with an applicant's tax exempt status. He suggested "that where the statutory standards in . . . [corresponding sections of the Internal Revenue Code] are at least as high, or higher, than those contained in the postal statutes, the Department should follow the lead of the Internal Revenue Service. This would be in all cases except those involving labor, agricultural and veterans' organizations."[90] In 1961, the acting deputy general counsel reaffirmed this position.[91] The department continued to insist that IRS rulings were not binding, and, to be sure, not all nonprofit applicants for the reduced rates qualified as one of the prescribed types of organizations. But, reviewing twelve years of department actions, a 1963 report "found no case . . . where the Post Office Department has failed to defer to the Internal Revenue Service's determination of an organization's nonprofit status. The reason for this is that the Post Office Department has not developed a set of concrete standards for making this determination."[92]

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[89] S. Rep. No. 1086, 83rd Cong., 2d sess. (1954), p. 190.

[90] Letter from Goff to Edwin A. Riley, May 9, 1955, reprinted in McCoy, "Report on Preferential Second and Third-Class Postal Rates for Nonprofit Organizations," pp. 137-140.

[91] Letter from Adam G. Wenchel to Director of the Postal Services Division, Aug. 17, 1961, reprinted in ibid., pp. 141-142.

CONGRESSIONAL ACTIONS THROUGH THE 1960S

Congress adjusted the rates and eligibility of the preferred subclasses slightly during the 1950s and 60s, which occasionally prompted reexaminations of the underlying policy.

Preferred Rates as Public Service

Working under contract to the Senate post office committee, the National Education Association in 1954 prepared an ambitious study assessing the importance of the postal service to education. The NEA questioned the validity of distinguishing mailers by their tax status, arguing that some commercial firms advanced educational interests as much or more than nonprofit operations. Furthermore, NEA challenged the wisdom of conferring the preferred rates on the eight types of organizations enumerated in the law. In a recommendation reminiscent of one made by Charles A. Heiss in 1946, NEA suggested the following distinction:

> Religious, educational, scientific, and philanthropic organizations offer their services to the community as a whole and to all members of that community. This is less true of labor, agricultural, veterans, and fraternal organizations whose clientele is composed primarily of segments of society. . . . The preference given to the first four categories appears to be based on the general assumption that the national welfare is promoted when religion, education, science, and philanthropy are encouraged.[93]

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[92] Ibid., p. 29.

[93] S. Rep. No. 1086, 83rd Cong., 2d sess. (1954), pp. 182-183.

NEA speculated that Congress included labor and agricultural organizations because of their economic contributions, and veterans and fraternal groups "more for reasons of expediency rather than as the result of a carefully thought-out policy."[94] The NEA recommendations, however, never became law.

Throughout the mid-1950s, Postmaster General Arthur E. Summerfield kept pushing for substantial rate increases.[95] In 1957, the Senate post office committee took charge of the administration's proposal and reported a bill that would have fixed second- and third-class preferred rates at 50 percent of those charged regular mailers.[96] This formula would have produced only modest changes for the nonprofit organizations; it nonetheless provoked debate, which centered on the slightly higher minimum charge for exempt periodicals.

Senator Mike Monroney, Democrat of Oklahoma, led the drive to raise the 1/8 cent per piece minimum rate. Like Heiss and NEA, Monroney could not "reconcile the continued attempt to shift to the general taxpayer the cost of handling publications, aside from religious, scientific, and educational ones." He acknowledged the public service value of carrying mail for certain nonprofit organizations at reduced rates, but he recommended a minimum charge of

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[94] *Ibid*., p. 183.

[95] A byproduct of this perennial effort was the enactment of a far-reaching postal policy that reaffirmed the public service value of the preferred categories. See chapter two for a discussion of the 1958 Postal Policy Act.

[96] S. Rep. No. 1321, 85th Cong., 2d sess. (1958).

1/2 cent, and, when that seemed unlikely to pass, 1/4 cent.[97] Monroney decried the abuse of the special second-class rate, noting that almost all groups qualified "except the Rotary Clubs, the United States Chamber of Commerce, and the National Association of Manufacturers, which have been excluded because they were definitely mentioned in a House report."[98] He singled out the publications of such wealthy organizations as the American Bar Association, the American Medical Association and the teamsters union as undeserving of the subsidized rate. Even those who supported a continuation of the 1/8 cent minimum rate agreed that "there has been a lot of freeloading."[99]

As passed, the 1958 law left the rates on exempt publications undisturbed. Preferred third-class bulk rates, however, were fixed at 50 percent of the regular postage. The rate was 1 cent per piece until Jan. 1, 1960, and 1 1/4 cents thereafter.[100]

Raising Rates and Adding Publications: 1962

Four years later, many of the same individuals repeated the debate. As often happened, Congress entertained requests to vastly expand eligibility for the preferred rates.[101] One unsuccessful proposal would have added for-profit religious magazines to the special rates.[102] This time, however, the special third-class rate emerged untouched, but postage for exempt publications rose slightly. Because a general rate hike seemed inevitable, and small newspapers expressed willingness to give up the free-in-county privilege, substantial sentiment favored small phased increases for exempt publications. (See chapter three for a discussion of the 1962 law's impact on the in-county rate.) Proposals to double the minimum charge to 1/4 cent per copy met stout resistance. As the postmaster general remarked during the hearings, the post office realized that "to increase not-for-profit rates would not justify that entirely separate and extremely difficult area of dispute which we would get into."[103] Echoing these sentiments, Senator Monroney, who had led an attempt in 1958 to raise rates for nonprofit organizations, pressed for slight increases "knowing how little good it will do."[104] The conference committee froze the minimum preferred second- and third-class rates. The major change involved a three-step increase in the pound rate for nonprofit publications, from 1.5 cents a pound to 1.6 cents in 1963, to 1.7 cents in 1964, and 1.8 cents in 1965.[105]

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[97] Cong. Rec., Feb. 26, 1958, p. 2867; Feb. 27, pp. 3024-3027.

[98] Ibid., Feb. 28, 1958, p. 3115.

[99] Ibid., p. 3116.

[100] Act of May 27, 1958, 72 Stat. 134, 140; Act of Sept. 2, 1960, 74 Stat. 578, 673.

[101] Cong. Rec., Jan. 23, 1962, p. 763.

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[102] _Ibid_., pp. 761-762.

[103] Quoted in _ibid_., Sept. 27, 1962, p. 20996.

[104] _Ibid_., p. 20998.

[105] Relevant sections of the various conference reports and debates are found in _ibid_., Sept. 26, 1962, pp. 20755-20757; Oct. 3, pp. 21903-21905, 21916-21919, 22024-22027; Oct. 5, pp. 22571-22573, 22584-22588; Act of Oct. 11, 1962, 76 _Stat_. 832, 833.

Congress also admitted the publications of rural electric cooperative associations and state highway agencies to the preferred second-class rates. Spokesmen for REC associations testified that proposed second-class rate increases would fall especially heavily on their publications. They did not explicitly ask to be added to the list of exempt publications, but they did point out that their magazines' small profits were used for the benefit of the sponsoring organizations.[106] The conference committee retained this provision and it passed without debate.[107] The general manager of the National Rural Electric Cooperative Association, a former congressman, explained that the preferred rate would benefit about 30 magazines with a circulation of 3 million copies.[108] The American Newspaper Publishers Association said there was "no justification for the special privilege," and the Chamber of Commerce claimed "REC groups will now be able to enjoy a financial advantage while propagandizing against their prime target, the investor-owned private power industry."[109] At least twice in the next few years, bills to delete rural electric cooperative associations from the list were introduced, but defeated.[110]

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[106] Cong. Rec., Sept. 25, 1962, pp. 20691-20692, 20819-20822; Postal Rate Revision of 1962: Hearings on H.R. 7927 before the Senate Comm. on Post Office and Civil Service, 87th Cong. 1st sess. (1962) pp. 326-345.

[107] Cong. Rec., Sept. 25, 1962, pp. 20691-20692, 20819-20822.

[108] Quoted in "REC Papers Get 1/8 Cent Rate in New Bill," Editor & Publisher, Nov. 3, 1962, p. 64.

[109] Quoted in Ibid.

The provision adding "one publication published by the official highway agency of a State . . . which contains no advertising" apparently was added to assist Arizona Highways.[111] The addition of these two types of publications meant that the list of second- and third-class preferred mailers was no longer parallel. The post office had to add associations of rural electric cooperatives to its list of groups not eligible for the special bulk rates.[112]

Final Adjustments Before Reorganization

Postmaster General Lawrence O'Brien initiated the next round of changes in 1966 when he asked Congress to look at the growing use of the privileged rates. He proposed that postage on exempt publications be assessed, at least in part, on their advertising content. This proposal stemmed from a study of 213 nonprofit organizations that found six periodicals containing more than 51 percent advertising, and another 50 carrying 26 percent to 50 percent ads. In the third-class, the volume of nonprofit mail had risen 60 percent in six years, while regular-rate bulk mail had gone up only 15 percent.[113]

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[110] McCoy, "Report on Preferential Second and Third-Class Postal Rates for Nonprofit Organizations," p. 7; Cong. Rec., Oct. 10, 1967, pp. 28438-28439.

[111] McCoy, "Report on Preferential Second and Third-Class Postal Rates for Nonprofit Organizations," p. 7.

[112] Fed. Reg., Feb. 15, 1963, p. 1469.

[113] "P.O. Suggests Higher Rates for Non-Profit Mailers," Advertising Age, April 25, 1966, pp. 1, 178.

To cope with the burgeoning bulk mailings by nonprofit organizations, the House post office committee offered a variation on an idea suggested at least twice before. This latest proposal would have created a subclass within the preferred third-class rates for mailings by nonprofit charitable, religious, and general health organizations.[114] Other preferred groups still would have enjoyed rates below those paid by commercial mailers, but slightly higher than those of strictly charitable organizations. The rationale was that some groups in the preferred class, though nonprofit, existed primarily for the benefit of their members, and therefore did not deserve special rates for all their bulk mailings. Charles Heiss had made the same distinction in 1946 (for the preferred second-class), as had the National Education Association in its 1954 report. Taking a cue from the proposal, groups testifying at the Senate hearings underscored any activities that met this standard. Some, like the National Society for Crippled Children and Adults (Easter Seal), and the National Tuberculosis Association (Christmas Seal), had few problems.[115] The language of the House bill, however, proved troubling to such groups as the Disabled American Veterans.[116] A member of the Senate post office committee had to reassure the DAV and similar organizations that they would be entitled to the lowest rates even though their medical services were offered to a limited clientele.[117]

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[114] "House Postal Bill Harsh on News, Non-Profit Books," Advertising Age, July 31, 1967, pp. 1, 8.

[115] Postal Rates: Hearings on H.R. 7977 before the Senate Comm. on Post Office and Civil Service, 90th Cong., 1st sess. (1967) pp. 451-456.

Foreseeing administrative difficulties, the Senate post office committee rejected the idea of dividing nonprofit third-class mailers into two groups. Special third-class postage, the committee instead recommended, should be 40 percent of the regular rates and remain at that level through subsequent increases.[118] The Senate committee did express concern about the number of nonprofit organizations using the preferred rates. It invited the Post Office Department to suggest criteria that "may need to be imposed in order to eliminate those organizations whose activities do not warrant this large subsidization by the taxpayer." The report noted that an organization's nonprofit status "for internal revenue purposes has nothing to do with its being classified as a 'nonprofit' under the statutory requirements of postal laws." Beyond that observation, however, the Senate post office committee did not indicate what criteria might be appropriate.[119]

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[116] The House proposal would have extended the special low bulk mailing rate to "qualified nonprofit organizations (1) which are organized for charitable, religious, or general health purposes, or (2) when such matter consists wholly of solicitations of funds to be used for charitable, religious, or general health purposes." Postal Rates: Hearings on H.R. 7977 before the Senate Comm. on Post Office and Civil Service, 90th Cong., 1st sess. (1967), p. 452.

[117] Ibid., p. 473.

[118] Cong. Rec., Nov. 28, 1967, p. 33984.

The postmaster general's plan to charge postage partly by the advertising content of the nonprofit publications fared well in both the Senate and the House. The Senate post office committee was especially displeased with "those publications which carry substantial amounts of advertising and who therefore have an unfavorable advantage over regular taxpaying commercial publications because of their tax-exempt status and the reduced postage rates they pay." To reduce this abuse, the committee recommended that identical rate schedules be used for the advertising portions of both commercial and nonprofit publications; postage on the reading portion, in contrast, would remain preferential for the nonprofit periodicals.[120] Commercial publishers had long complained that exempt publications carried paid advertising in competition with profit-making enterprises. Congress seemed sympathetic to this appeal, especially when many of the nonprofit organizations hastened to distance themselves from such publications as National Geographic, which paid the same rates as small, advertising-free, nonprofit periodicals.[121] The House committee found that of the 8,000 to 10,000 publications authorized to use preferred second-class rates, only 200 accounted for 60 percent of the copies mailed and 70 percent of the weight.[122]

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[119] S. Rep. No. 801, 90th Cong., 1st sess. (1967), pp. 15-16.

[120] Ibid., p. 15.

[121] Postal Rates: Hearings on H.R. 7977 before the Senate Comm. on Post Office and Civil Service, 90th Cong., 1st sess. (1967), p. 473.

The Act of Dec. 16, 1967, extended the zone system to the publications of nonprofit organizations, but it set postage for the advertising portions well below those of commercial publications. Congress protected the small periodicals of nonprofit organizations by stipulating that those with less than 10 percent advertising paid postage only on their reading portion. Third-class preferred rates were set at 40 percent of the regular rates, as the Senate post office committee had suggested.[123]

During the floor debate neither house dwelled on what kinds of organizations were -- or should be -- entitled to the preferred rates. An attempt to add volunteer fire and rescue companies to the list of preferred mailers was defeated.[124] And some senators seemed surprised to learn that groups sending materials at the special second-class rates could take political stands.[125] The 1967 act created two mailing preferences. One, the program guides of nonprofit educational broadcast stations, was added by the Senate post office committee; it provoked no discussion.[126] The other, one publication of the official development agency of a state, was added by the House committee.[127]

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[122] H.R. Rep. No. 722, 90th Cong., 1st sess. (1967) pp. 30-31.

[123] 81 Stat. 613, 615-617; Cong. Rec., Nov. 29, 1967, pp. 34246-34247.

[124] Cong. Rec., Oct. 11, 1967, pp. 28626-28627.

[125] Ibid., Nov. 29, 1967, p. 34247.

[126] S. Rep. No. 801, 90th Cong., 1st sess. (1967), p. 13; Cong. Rec, Dec. 11, 1967, p. 25836.

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[127] H.R. Rep. No. 722, 90th Cong., 1st sess. (1967), p. 30. The House committee mistakenly said that this preference was already part of the 1962 law.

Five

The Library Rate

The creation in 1928 of a special library rate followed several decades of sporadic lobbying by library and education groups. Once established, however, the rate remained relatively unchanged and noncontroversial until the Postal Reorganization Act of 1970. The Post Office Department rarely complained about administering the subclass but it did object to the loss of revenue it caused. This argument, never pressed vigorously, arose when Congress added materials to the library rate in the late 1950s.

Reduced postage for library books initially served three objectives. Proponents urging the library rate on Congress in the early 20th century argued (1) that rural residents required such a service to enjoy even minimal access to library resources; (2) that interlibrary loans of specialized materials advanced science and scholarship; and (3) that house-to-house delivery would be convenient for library patrons. When Congress in 1976 extended this special rate to publishers mailing books to libraries, an additional rationale appeared: lower distribution costs for book producers would be passed along to libraries.

BACKGROUND

Several developments converged in the last quarter of the nineteenth century to pave the way for a special library rate. The American Library Association, the principal proponent of an inexpensive library post, was founded in 1876 as an outgrowth of a more general phenomenon, the public library movement. Originating in the Northeastern states, an organized drive to establish public libraries gained currency, though unevenly, throughout the country at mid-century. Associated with the growth of public education, the library movement at first underscored its value as an adjunct to schools. By the 1880s and 90s, however, professional librarians and their partisans envisioned a larger role for public libraries, one of personal, moral, and civic betterment.[1]

To promote individual and social improvement through reading, librarians realized that they needed to reach patrons, especially those far removed from collections. They began a concerted program of library extension, much like agricultural extension, at the close of the nineteenth century. At first, extension services emphasized making books more accessible within cities that already had public libraries. Branch libraries and deposit stations opened in a number of city neighborhoods. But the creation of the first county library in 1898 signaled a new phase of the extension program -- reaching out to communities deprived of library services. A number of states organized county library systems in the first decades of this century and they often used book wagons (later bookmobiles) as well as the mails to reach widely scattered readers.[2]

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[1] See generally Samuel S. Green, The Public Library Movement in the United States, 1853-1893 (Boston: The Boston Book Co., 1913); Robert E. Lee, Continuing Education for Adults through the American Public Library, 1833-1964 (Chicago: American Library Association, 1966), chapter 2.

Books by Mail

Only in 1914 did the mails become a viable channel for the circulation of books. Although Congress had encouraged the dissemination of periodicals since the passage of the first postal law, books were banned from the mails until 1851.[3] Policymakers and the Post Office Department had discouraged mailings of heavy or bulky matter because primitive postal transports could not easily accommodate it. Once accepted as mailable matter, books were assessed the relatively expensive rate for irregular pamphlets. From 1863 until 1914 books paid third-class postage, somewhat less than letters but considerably more than periodicals.[4] As the library extension movement was getting underway, for example, third-class postage on books was 1 cent per 2 ounces compared to the 1 cent per pound second-class rate that periodicals enjoyed.[5] These rates effectively closed the mails to library books.

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[2] Lee, Continuing Education for Adults through the American Public Library, pp. 31-33.

[3] Act of March 3, 1851, 9 Stat. 587.

[4] U.S. Post Office Department, U.S. Domestic Postage Rates, 1789 to 1956 (Washington, D.C.: Government Printing Office, 1956), pp. 10-11, 33-34.

[5] Ibid., pp. 31-35.

The post office became somewhat more hospitable to the circulation of library materials in 1914 when the postmaster general shifted books to fourth-class parcel post mail. Parcels of books weighing 8 ounces or less paid 1 cent per 2 ounces, the same as third-class rates. For parcels over 8 ounces, rates were substantially less and assessed according to distance conveyed.[6]

Before books were accorded parcel post rates, libraries rarely used the mails; rather, they shipped materials, usually interlibrary loans, by private express companies. Reduced book postage, however, immediately stimulated a proliferation of various library extension services. Most notably, a number of state and city libraries began offering their resources to patrons through the parcel post. In 1914, Wisconsin launched an ambitious program to place the resources of the major libraries in Madison within reach of all state residents, including those 250 miles to the north. Borrowers paid postage, rarely more than 5 cents. Librarians noticed that rural borrowers typically asked for more nonfiction books than those in the city. Some borrowers shared a book obtained through parcel post with many friends before returning it to Madison. A number of city libraries inaugurated similar parcel post systems in 1914 and 1915;

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[6] Order No. 7705, Dec. 6, 1913, effective March 16, 1914; Order No. 7706, Dec. 6, 1913, effective Jan. 1, 1914; Order No. 7800, Jan. 31, 1914; U.S. Post Office Department, U.S. Domestic Postage Rates, 1789 to 1956, pp. 36-37, 70.

some required that borrowers deposit money for postage.[7]

Library Books at Second-Class Rates?

A faltering movement to secure a special rate for library books emerged in the 1880s, but it failed to mount an organized campaign until library extension programs became well established at the turn of the century. The first phase of the movement involved efforts to extend low second-class rates to library books. Second-class rates had long enticed book publishers; some went as far as releasing unbound books as part of so-called library series, issued just often enough to meet the post office's definition of a periodical. In 1886, the American Library Association proposed that library books be admitted to the second-class; a bill to that effect was introduced in Congress a year later.[8] About the same time, the post office and Congress were working to remove books from the second-class mails.[9] With policymakers laboring to restrict, rather than expand, this subsidized category, the ALA's proposal died.

A more sustained lobbying effort for a cheap library post began as the library extension movement gained momentum. The New England Education League organized a Library Post Committee in 1899 to "secure house-to-house delivery of books in cities and large towns and to open central libraries to outlying areas on an equitable plan of library support. . . ."[10] W. Scott, secretary of the postal committee, presented a plan for admitting library materials to the second-class mail at the 1899 ALA meeting. Scott and other proponents argued that postal policy should not discriminate in favor of ephemeral commercial publications and against the more enduring printed matter circulated by public libraries. Mailing library books cost four to eight times as much as magazine postage, Scott noted, and much of that material was inferior "yellow journalism" or base fiction. The nation needed an antidote of more serious reading matter. Scott also asserted that low-cost library postage would equalize access to library resources, both within cities and in the countryside. In fact, it might even yield a profit for the post office because most library books would circulate locally.[11]

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[7] Laura Janzow, Library Without Walls (New York: The H.W. Wilson Co., 1927), pp. 373-380, 395-417.

[8] W. Scott, A Cheap Library Post (Cambridge, MA: The People, 1901), p. 1.

[9] H.R. Rep. No. 177, 50th Cong., 1st sess. (1888); Cong. Rec., Feb. 2, 1888, pp. 911-914.

The Library Post Committee lobbied vigorously for cheap library rates. It solicited letters of support from dozens of librarians, formed a national council with representatives in at least eighteen states, and successfully courted favorable attention in the press. The committee canvassed crucial policymakers, including Eugene F. Loud, the chairman of the House post office committee who had spent several years trying to tighten eligibility requirements for second-class mail matter. "I would prefer to see second-class privileges curtailed rather than extended," Loud wrote the committee, "yet if privileges are to remain as they are, I know of no reason why library books should not be included; in fact, I think they are more entitled to admission than much of the matter that is now accepted." The postmaster general's ambivalent remarks followed in the same vein, though those of some former postmasters general were more favorable.[12]

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[10] Ibid.

[11] Ibid.; Library Journal, July 1899, pp. 134-135; "Editorial," Education, November 1899, pp. 177-178.

The Library Post Committee framed a bill and arranged for its introduction in the House. It stipulated that books and other printed matter would be entitled to pass to, from, and between public libraries as well as those operated by schools and nonprofit organizations, for 1 cent per pound, the same as second-class rates. The House post office committee held hearings on the bill, but failed to take further action.[13] This was an inopportune time to try to add library books to the second-class mail privilege as Loud, with the active support of the Post Office Department, had already spent several years (and would spend several more) attempting to restrict eligibility for these low rates.[14]

Prospects for adding library books to the second-class mail did not materially improve in the following years, so the American Library Association and others working for a cheap library post changed their tactics slightly. Supporters noted that a few European countries had a special mail category for library materials, in some cases including postage-free interlibrary loans. By 1905, the ALA was advocating a special library post of 1 cent per pound.[15] Another tactical shift involved focusing on benefits to rural America, a step that enlisted supporters, both in and out of Congress, from states with large rural populations. The movement for a library post, which had arisen in New England, thus broadened its political and geographical base.

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[12] Scott, A Cheap Library Post, pp. 11-12.

[13] Ibid., pp. 7-22; Cong. Rec., Jan. 27, 1900, p. 7513.

[14] See generally H.R. Rep. No. 260, 54th Cong., 1st sess. (1896), pp. 188-211.

LEGISLATIVE HISTORY OF THE FIRST LIBRARY RATE, 1928

The special library post, created by the Act of May 29, 1928, was but a small part of a major overhaul in second-, third-, and fourth-class rates. Moreover, the library rate attracted little attention during the push for postal reform that began in 1921 and culminated in 1929. In fact, bills to create a library rate emerged in nearly final form in the early 1920s, but kept getting pushed aside as the policymaking process bogged down in debates over second-class rates.

Spencer and The First Congressional Hearings

A school principal from upstate New York led the fight for a library rate that Congress eventually passed in 1928. Alfred L. Spencer, noting the paucity of books in rural communities, began his crusade in 1916. In 1919, as chairman of a New York Library

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[15] Janzow, Library without Walls, p. 401; R. R. Bowker, "The Post Office: Its Facts and Its Possibilities," American Monthly Review of Reviews, March 1905, pp. 325-332.

Association committee, Spencer experimented with a penny library rate. He arranged for his local post office to mail books at a rate of 1 cent for an ordinary volume and 2 cents for larger works; Spencer provided the difference between this low experimental rate and the actual parcel post charges. The demand for the service convinced him of the need for a regular low-cost library rate.[16]

Joining forces with the American Library Association, Spencer showed increasing sensitivity to the realities of the policymaking process. For example, when an Iowa congressman proposed free delivery of library books on rural routes, Spencer and the ALA studied the plan but decided against endorsing it because of opposition in the Post Office Department.[17] Rather, Spencer arranged for his congressman to introduce a bill to reduce rates on library books, which, in 1924, prompted the first major congressional hearings on the issue. Spencer, moreover, took charge of the witnesses, all of whom spoke favorably of the plan.

Representatives from the ALA, AFL, National Grange, Library of Congress, League of American Penwomen, National Education Association, PTA and the General Federation of Women's Clubs testified about the advantages a low library rate would bring to rural America. Several witnesses claimed that 40 to 50 million Americans lived too far from the closest library to enjoy its benefits. In his testimony,

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[16] Library Journal, Sept. 15, 1928, p. 765; New York Libraries, November 1919, p. 20.

[17] "Cheaper Library Book Post," ALA Bulletin, March 1923, p. 184.

Spencer told committee members that two rather different leaders wrote to endorse the plan -- the dean of the Missouri College of Agriculture and Samuel Gompers, long-time president of the American Federation of Labor. "They said this, that it was an essential matter of good public policy that in this wide country, with the far-separated populations, that all classes in all sections should have regular and reliable access to the same sources of information. . . ."[18]

Moreover, most library books, Spencer noted, would circulate locally, certainly within the state of the lending library, so they would not tax the department's transportation resources. In fact, the post office could probably handle library books with little additional cost, he argued, because most of its rural postal carriers were underutilized. Furthermore, library books were especially sensitive to postage because they traveled both to and from the borrower. Thus, the 6 cent average postage for a book became 12 cents for the round trip. Astutely, Spencer also discounted the importance of interlibrary loans, which would require long distance mailings, in favor of underscoring the advantages of a library post to rural residents.[19]

As part of the coordinated lobbying effort, the ALA tried to mobilize all state library commissions and 121 county libraries to support the proposed rate. But congressional action stalled.

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[18] Postage Rates on Books To and From Certain Public Libraries: Hearings on H.R. 7218 before a Subcomm. of the House Comm. on the Post Office and Post Roads, 68th Cong., 1st sess. (1924), p. 7.

[19] Ibid.

Although the House committee exhibited sympathy for the proposal, it honored the post office's request to postpone further consideration until the department completed a study to ascertain the costs of handling the different classes of mail.[20] Once the results of the cost ascertainment report became available, Spencer seized on its findings to demonstrate the financial wisdom of a cheap library rate. Parcel post packages traveled an average of 373 miles, whereas most library books, he estimated, would circulate within 50 miles. He pressed his argument further, claiming that "Our proposed library rate is quite as self-paying as any class of commercial mail" because it would add revenue on the underutilized rural routes.[21]

Despite the compelling argument that a low library rate would be self-supporting or even revenue-producing, the proposal failed to make much headway. As the ALA recognized, a controversial plan to raise postal employees' salaries preempted consideration of much else by the House and Senate post office committees during 1925.[22] Advocates of a cheap library post redoubled their efforts in 1926 and secured introduction of a bill in Congress.[23] During extensive hearings held in 1926 by a joint subcommittee of Congress, the National Association of Book Publishers endorsed the ALA's proposed library rate but then went further, suggesting that it be extended to those who bought, not just borrowed, books.[24] Congress, however, adjourned before action could be taken, postponing consideration of a library post until the entire fourth-class mail category could be revamped. The post office still opposed the creation of a special rate despite Spencer's pleas that it would be economical and beneficial to rural America.[25]

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[20] "Book Post," ALA Bulletin, August 1924, pp. 199, 227-228.

[21] Alfred L. Spencer, "The Case for the Library Book Post," Library Journal, Jan. 15, 1925, pp. 77-78.

[22] "Library Book Post," ALA Bulletin, July 1925, p. 198.

[23] "Book Post," ALA Bulletin, March 1926, p. 342; Cong. Rec., March 13, 1926, p. 5587.

The Library Rate Passes, 1928

The breakthrough finally came in 1928 when the Post Office Department embraced the idea of a library rate as a small part of a plan to overhaul postage in all classes of mail except the first. During House hearings, Joseph Stewart, speaking for the department, recommended a library rate of 3 cents for the first pound and 2 cents for each additional pound; this rate was to apply through the third zone (300 miles) or within a state (because Texas and California spanned four zones). Except for one change -- a reduction in the rate for the second and additional pounds to 1 cent -- this proposal, approved by postal authorities, became law. Stewart indicated the department's willingness to consider an even lower library rate on rural routes that did not require the use of expensive railway transportation.[26]

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[24] Postal Rates: Hearings before the Special Joint Subcomm. on Postal Rates, 69th Cong., 1st sess. (1926), p. 406.

[25] Ibid., p. 1673; Library Journal, Dec. 15, 1926, p. 1139.

The library rate provoked virtually no debate as it wound through Congress. The House post office committee reported a bill in keeping with the post office's recommendation.[27] The proposed library rate was among the provisions Representative Clyde Kelly of Pennsylvania called "not in the least controversial, since they have been approved without qualification by every party concerned."[28] Kelly had chaired the 1924 hearings devoted exclusively to consideration of a library post. In explaining the 1928 version of the proposal, Kelly noted that 42 million rural residents had no access to library materials. Parcel post rates for a typical 2-pound book sent within the local, first, and second zones was 8 cents; to the third zone, 10 cents. The proposed library rate reduced the charge to 5 cents, or 10 cents total for return postage. The favorable reception accorded the proposed library rate probably stemmed from the belief that it would produce revenue, not drain it.[29]

Advocates of the library post even succeeded in securing one modification in the bill that made it more attractive to them. Trade journals criticized the House committee's rate of 2 cents for the second and subsequent pounds as penalizing bulk mailings of books, which formed the backbone of some traveling libraries.[30] A Senate amendment reducing the charge for additional pounds to 1 cent met with unanimous approval in a conference committee.[31] As amended, the proposed library rate survived several more conference committees that haggled over second-class rates, and was signed by the president on May 29, 1928.[32]

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[26] Library Journal, March 15, 1928, p. 266; see also Regulating Postal Rates: Hearings on S. 808, 843, 1459, 2040 and H.R. 12030 before the Senate Comm. on Post Office and Post Roads, 70th Cong., 1st sess. (1928).

[27] Cong. Rec., April 2, 1928, pp. 5780-5781.

[28] Ibid., p. 5788.

[29] Ibid., p. 5786.

The 1928 law provided that public libraries or nonprofit organizations could send and receive books for 3 cents for the first pound and 1 cent for each additional pound in the first three parcel post zones (up to 300 miles) or within the state. In addition, the law stipulated that institutions using library rates had to provide the post office with evidence of their nonprofit status.[33]

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[30] Library Journal, April 15, 1928, pp. 363-364; "Unfair Discrimination in Book Post," Libraries, May 1928, pp. 243-244.

[31] Cong. Rec., May 2, 1928, p. 7607; May 19, p. 9137; May 26, p. 10138.

[32] 45 Stat. 940, 943.

Librarians applauded the law, but signaled their interest in securing an even broader privilege. "The next step is to get lower postal rates for all books sent to any part of the country, particularly when a special rate is granted to magazines and newspapers," one library journal proclaimed. "To do otherwise would be to discriminate against educational activities."[34] The ALA, however, noted that it preferred to study the effects of the existing law before launching another campaign.[35] In fact, one year after the library rate took effect, an ALA postal committee expressed concern that fewer than 100 institutions had registered with the post office to take advantage of it.[36] Some observers claimed the registration procedure discouraged use.[37]

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[33] Ibid., p. 943:

> (d) Books, consisting wholly of reading matter and containing no advertising matter other than incidental announcements of books, when sent by public libraries, organizations or associations not organized for profit and none of the net income of which inures to the benefit of any private stockholder or individual, as a service to county or other unit libraries or as a loan to readers or when returned by the latter libraries or readers to such public libraries, organizations, or associations shall be charged with postage at the rate of 3 cents for the first pound or fraction thereof, and 1 cent for each additional pound or fraction thereof, except that the rates now or hereafter prescribed for third or fourth-class matter shall apply in every case where such rate is lower than the rate prescribed herein for books under this classification: Provided: That this rate shall apply only to such books as are addressed for local delivery, for delivery in the first, second, or third zone, or within the State in which mailed.
>
> Public libraries, organizations, or associations before being entitled to the foregoing rates shall furnish to the Postmaster General under such regulations as he may prescribe, satisfactory evidence that none of the net income of such organizations inures to the benefit of any private stockholder or individual.

[34] "Book Post Bill in Congress," Libraries, June 1928, p. 316; quote from "Lower Postal Rates for Libraries," July 1928, p. 351.

Postmaster General Harry S. New described the special library rate in glowing terms; the "rate will undoubtedly promote and facilitate the circulation of meritorious literature, increase the spread of knowledge, and bring some measure of pleasure and contentment to those previously unable to have access to the books desired by them."[38] But two years later, only 300 libraries had registered to use it.[39]

Use of the library post may have started slowly, but a few years after its inauguration statewide library services had greatly expanded their operations based on this postal privilege. For example, the Wisconsin Free Library Commission, which had sent up to 4,000 books a year under 1914 parcel post rates, was loaning about 100,000 volumes by 1937. Borrowers living in villages and along rural routes received their books directly; those in larger towns called at their local library for books sent by the state commission. Some states developed adult education programs using the library rate to send packages of books on related subjects to students.[40] County library systems also used the special rate to move books between central collections and branches.[41]

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[35] "The Lower Postal Rates on Library Books," Libraries, October 1928, p. 415; "Library Book Post," Library Journal, Nov. 15, 1928, p. 930; ibid., Jan. 15, 1929, p. 71.

[36] "The Library Postal Rates," New York Libraries, November 1929, pp. 14-15; see also "Neglected Postal Rates," Libraries, April 1929, p. 162.

[37] "Editorial Forum," Library Journal, July 1929, p. 598.

[38] 1928 PMG Annual Report 3.

[39] 1930 PMG Annual Report 53.

EXTENDING THE LIBRARY RATE

The library rate established in 1928 remained unchanged for twenty years, when it was raised slightly. In the interim, one development, the creation of a general book rate, bore some relation to the library post.

The Library and Book Rates

President Franklin D. Roosevelt created the book rate by proclamation in 1938. As part of Depression era emergency legislation, the president had been empowered to reduce postal rates, though not increase them. Book publishers, who had pressed for lower rates in 1925 and 1928 hearings, now directed their efforts at President Roosevelt. Publishers and their allies, including library and education groups, formed a National Committee to Abolish Postal Discrimination Against Books and retained as counsel a prominent attorney, Morris Ernst. Ernst set out the publishers' arguments in a memorandum to Roosevelt. He noted, for example, that a 2-pound magazine sent from coast to coast paid 3 cents postage, where a book of equal weight sent by parcel post cost 26 cents. Roosevelt responded by establishing a special book rate of 1 1/2 cents a pound regardless of distance.[42] The president kept renewing the rate until Congress in 1941 added the special book rate to statute, but raised it to three cents a pound. Congress hiked the book rate again in 1944 and 1948 until it stood at 8 cents for the first pound and 4 cents for each additional pound.[43]

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[40] Marion Humble, Rural America Reads (New York: American Association for Adult Education, 1938), pp. 71-83.

[41] Mildred W. Sandoe, County Library Primer (New York: H.W. Wilson Co., 1942), pp. 99-100.

Book publishers, understandably pleased with the 1938 book rate, enlisted the cooperation of librarians and educators to vigorously oppose the increases Congress proposed in the 1940s.[44] Initially, book postage was cheaper than the library rate. And even as the book rate climbed, librarians found it useful because their special rate applied only within the state or up to 300 miles. A year after the book rate took effect, the Office of Education estimated that it saved schools and libraries $1.6 million.[45] The book rate remained cheaper than parcel post, which was the alternative for long-distance mailings (i.e., more than 300 miles) of library materials.[46] Librarians had an additional incentive for siding with publishers in opposing increases in the book rate: publishers passed along increases in delivery costs, which cut into library budgets.[47]

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[42] Fed. Reg., Oct. 31, 1938, p. 2588.

[43] Jane Kennedy, "United States Postal Rates, 1845-1951," (Unpublished Ph.D. dissertation, Columbia University, 1955) pp. 81-85; "Committee Formed to Secure Lower Postal Rates," Publisher's Weekly, Oct. 8, 1938, p. 1360; "Major Co-operative Effort Rewarded by New Book Post Provisions," Publisher's Weekly, Nov. 3, 1951, pp. 1793-1795.

[44] "Booksellers Can Help Preserve Low Postal Rate for Books," Publisher's Weekly, May 24, 1947, p. 2567.

[45] S. Rep. No. 1086, 83rd Cong., 2d sess. (1954), p. 200.

While the book rate rose sharply in the 1940s, the library post faced only one modest increase. In 1947, President Harry S Truman and the postmaster general asked for rate increases to cover part of the mounting postal deficit. At the time, revenue from fourth-class mail, which included the book and library rates, fell an estimated $47 million short of its costs.[48] In 1948, the book rate was nearly doubled, while that for library materials rose from 3 cents to 4 cents for the first pound.[49] Unable to thwart the general postage hike in 1948, the American Library Association asked Congress in 1949 to restore the library rate to 3 cents for the first pound and permit mailings beyond the 300-mile limit.[50] Paul Howard, director of ALA's Washington office, testified that libraries would have to seek increased tax revenues to cover expenses, not only because of the higher library rate, but also because the near doubling of the book rate had hurt them as well as booksellers.[51]

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[46] 1948 Postal Laws & Regulations 235-242.

[47] Increase in Postal Rates, Part 4: Hearings on S. Res. 43 before the Senate Comm. on Civil Service, 80th Cong., 1st sess. (1947), pp. 363-365.

[48] Cong. Rec., June 18, 1948, p. 8908.

[49] "New Book Postage Rates Go Into Effect January 1," Publisher's Weekly, Dec. 25, 1948, pp. 2469-2471.

[50] ALA Bulletin, May 1949, p. 167.

Adding Films to the Library Rate

Congress did not heed these pleas in 1949, but in the early 1950s it began considering proposals to extend the library privilege in two directions -- by including library materials other than books and by lifting the 300-mile limit.

In 1953, the Committee on Equitable Postal Rates for Educational Films, a coalition of several dozen education and library organizations, began pressing Congress to make films eligible for the library and book rates. A spokesman for the National Education Association, who also represented the coalition, argued that film use had mushroomed since the creation of the library and book rates. Moreover, "[b]ecause of the high unit cost of films, relatively few organizations and individual schools can afford to purchase them and must depend upon film library service through the mails."[52] The NEA representative estimated that postage on films amounted to $6 million under current rates, and would be cut by about half if Congress included them in the book and library posts.[53] In questioning Julia D. Bennett, director of the ALA's Washington office, Senator Mike Monroney of Oklahoma observed that books mailed "under a public-service rate" generally reached one reader, while "a film going out would, on the average, serve 25 or 50 or even 75 or 100 people. So you magnify whatever reductions there are in the cost, if the transportation of the film is not just to serve one, but it reaches an audience of many."[54] Bennett reported that in November 1952, the nation's public libraries had circulated 231,826 educational films reaching an audience of 2.9 million viewers.[55] A witness testifying for the National Grange told the committee that films had become an important tool in demonstrating new farming techniques.[56]

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[51] "Postal Rate Hearings," ALA Bulletin, June 1949, p. 206.

[52] Authorizing Educational Films and Related Material to be Transmitted at Book Rates: Hearings on S. 971 before the Senate Comm. on Post Office and Civil Service, 83rd Cong., 1st sess. (1953), p. 4.

[53] Ibid.

Both the Senate and House committees strongly supported the bill.[57] Only the post office testified against the proposal, estimating it would reduce revenues more than the $3 million one proponent had mentioned. But, as South Carolina Senator Olin Johnston told the department's witness, "I am convinced this is just as important as the subsidies in other classes."[58] The department also feared that deciding eligibility would prove troublesome because the library rate applied to nonprofit organizations as well as libraries.[59] The bill passed without debate.[60]

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[54] *Ibid*., p. 12.

[55] *Ibid*., p. 11.

[56] *Ibid*., pp. 12-14.

[57] S. Rep. No. 293, 83rd Cong., 1st sess. (1953); H.R. Rep. No. 668, 83rd Cong., 1st sess. (1953).

[58] *Authorizing Educational Films and Related Material to be Transmitted at Book Rates: Hearings on S. 971 before the Senate Comm. on Post Office and Civil Service*, 83rd Cong., 1st sess. (1953), p. 17.

The law specifically entitled schools, colleges, and universities, along with public libraries and nonprofit organizations, to use the preferred rate to send and receive films. Presumably most educational institutions already qualified for the library rate as nonprofit organizations, but this was the first time they were mentioned in statute. The 1953 law also enumerated the eligible types of nonprofit organizations; not surprisingly, they were the same ones entitled to the preferred second- and third-class rates. Whether intentionally or not, the statutory language permitted *commercial* producers and distributors to send films to libraries and the other eligible mailers at the preferred rate. Books, in contrast, could just be sent to and from borrowers at the reduced rate.[61]

NO ZONES AND NEW LIBRARY MATERIALS

Even as success on reducing postage for films seemed imminent, the American Library Association announced an ambitious long-term goal at its 1953 convention: "that a single unzoned and uniform rate for reading matter -- in books, magazines and newspapers -- and for educational audio-visual materials should be the ultimate objective. . . ."[62] The ALA, of course, never succeeded in putting books on the same terms with periodicals, but in 1958 it did secure an unzoned library rate for a variety of educational materials.

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[59] *Postage Rate for Educational Film: Hearings on H.R. 1939 and S. 971 before the House Comm. on Post Office and Civil Service*, 83rd Cong., 1st sess. (1953), p. 12.

[60] *Cong. Rec.*, May 21, 1953, p. 5303; July 7, p. 8124.

[61] Act of July 20, 1953, 67 *Stat*. 183, 184; *Fed. Reg.*, Aug. 15, 1953, pp. 4889-4890.

Public Service and the Library Post

At the request of President Dwight D. Eisenhower, Congress began exploring a plan to put the post office on a sounder financial footing. In 1953, the Senate launched a major study of all rates and contracted with the National Education Association to estimate the public service value of postal operations. (See chapter two for details of this inquiry.) NEA, in turn, enlisted the ALA to gather data on libraries' use of the mails.[63] From the outset, this round of proceedings promised to treat the library rate favorably. Kansas Senator Frank Carlson, chairman of the post office committee, announced that the study would proceed on the assumption that "A segment of postal service concerns activities having to do with education and particularly adult education. Books, magazines, newspapers, films handled through the mail . . . ha[ve] to do in the broadest way with education." The major unanswered question, Carlson noted, was how to finance the public service function.[64] The NEA's part of the Senate study concluded, not surprisingly, that special rates for library and other educational materials were justified by their value to the nation, and a portion of their cost should be considered a public service.[65]

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[62] "Postal Rates," ALA Bulletin, September 1953, p. 363.

[63] "Postal Rates," Wilson Library Bulletin, December 1953, p. 380.

[64] Cong. Rec., July 24, 1953, p. 10053; see also Postal-Rate Revision, Vol. 2: Hearings on H.R. 6052 before the House Comm. on Post Office and Civil Service, 83rd Cong., 1st sess. (1953), pp. 477-478.

Far-reaching proposals addressing the basic structure of rate policy emerged from this round of investigations, but one of fairly modest dimensions expanded the library privilege. Building on the findings of the NEA study, key postal policymakers introduced bills to "rectify practically all of the significant irregularities in the postal rates affecting educational and cultural materials sent through the mails."[66] Sponsored by Republicans and Democrats on the House and Senate post office committees, the bills proposed to eliminate the 300-mile delivery limit on the library rate and to abolish the requirement that users obtain a permit from the department. In addition, they would make certain materials -- bound academic theses, bound periodicals, bibliographies, and others -- eligible for book and library rates.[67]

The development of specialized library collections had invalidated the rationale for the 300-mile (or within state) limit on the library rate, witnesses testified. When created in 1928, the special library post was principally meant to serve library extension programs within states. But, "[i]n the interest of economy and efficiency, regional library services for scholarly and research materials have been established, and a nationwide network exists for the interchange of materials needed for research," the Senate committee reported.[68] The ALA witness underscored the argument that with the specialization of knowledge, statewide systems were no longer self-sufficient, and that researchers needed access through the mails to regional and national collections.[69] The Senate committee also agreed that registering libraries accomplished little when audiovisual materials, admitted to the library post in 1953, could be sent without obtaining a permit.[70]

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[65] S. Rep. No. 1068, 83rd Cong., 2d sess. (1954), pp. 231-232.

[66] John E. Moss, Jr., "Libraries, Education and the Postal Service," Library Journal, May 1, 1955, pp. 1080-1081.

[67] Ibid.; see also Olin D. Johnston, "Educational Use of the Mails," National Education Association Journal, May 1955, pp. 291-292.

The other aspect of the proposal, to admit more educational materials to the library rate, also received support from all witnesses except those representing the Post Office Department. Supporters complained that the existing classification scheme imposed unnecessary burdens on libraries.[71] The ALA spokesman explained that some educational materials commonly exchanged by mail often had to go at book or parcel post rates while others went at library rates; this required separate packaging and handling even when sent to the same address. In addition, the post office considered scholarly bibliographies to be advertising for book publishers, rendering them ineligible for the nonprofit library rate. The ALA urged Congress to add bibliographies, along with bound magazines, to the preferred subclass. Bound magazines had also been kept from interlibrary loans because the publications contained advertising.[72] Speaking against extending the library rate, the assistant postmaster general noted that the department lost $1.2 million on it during 1954.[73] Despite the department's reservations, Congress approved the expanded library rate as part of the Postal Policy Act of 1958.[74] (See chapter two for details on the philosophy underlying the 1958 Act.)

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[68] S. Rep. No. 517, 84th Cong., 1st sess. (1955), p. 8.

[69] To Readjust Postal Classification on Educational and Cultural Materials: Hearings on H.R. 5139 and H.R. 5142 before the House Comm. on Post Office and Civil Service, 84th Cong., 1st sess. (1955), p. 24.

[70] S. Rep. No. 517, 84th Cong., 1st sess. (1955), p. 8.

[71] Ibid.

In 1958, the Post Office Department also relaxed the requirements for use of the library rate. Mailers no longer had to obtain a permit from their postmaster; they needed only to indicate the name of the eligible library or organization in the address or return address.[75]

Adding Scientific Kits

Clarification of the library rate became necessary in 1959 and it opened the door to further additions. At the request of the post office, Congress substituted "sound recordings" for "phonograph recordings" and clarified a provision dealing with books containing blank spaces for notations, typically school workbooks. During the hearings on these uncontroverted modifications, the ALA and National Audiovisual Association intervened to request two minor additions to the library privilege. The ALA sought to bring unbound periodicals within the coverage of the library rate, and the audiovisual association asked that printed scripts and guides be permitted to accompany films. The department agreed to these requests.[76]

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[72] To Readjust Postal Classification on Educational and Cultural Materials: Hearings on H.R. 5139 and H.R. 5142 before the House Comm. on Post Office and Civil Service, 84th Cong., 1st sess. (1955), pp. 21-27.

[73] Ibid., p. 6.

[74] Act of May 27, 1958, 72 Stat. 134, 140-141; Fed. Reg., July 31, 1958, p. 5762.

[75] Fed. Reg, April 9, 1958, p. 2301; May 9, 1958, p. 3100.

These hearings also provided an opportunity to add an entirely new type of material to the library rates -- scientific and mathematical kits. A representative of Science Materials Center, affiliated with the Library of Science in New York, argued that such educational kits and instruments deserved the same postal status as library materials. The federal investment in science education, which rose dramatically after the Soviet Union's success with Sputnik, militated in favor of extending preferential rates to scientific teaching tools, he claimed. He told the committee that some American schools imported science kits from the Soviet Union because its heavily subsidized production and distribution made them economical even in the United States.[77] The Senate postal committee reported a bill adopting his suggestions as well as permitting materials mailed to and from cooperative processing centers to be sent at the library rate.[78] The post office interposed no objections, and the bill passed without debate.[79]

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[76] Clarifying Postage Rates for Educational, Cultural and Library Materials: Hearings on H.R. 4595 and H.R. 4596 before the House Comm. on Post Office and Civil Service, 86th Cong., 1st sess. (1959); H.R. Rep. No. 252, 86th Cong., 1st sess. (1959); Special Postage Rates for Educational, Cultural, and Library Materials: Hearings on H.R. 4595 and H.R. 4596 before the Senate Comm. on Post Office and Civil Service, 86th Cong., 1st sess. (1959).

Administratively, the department made one additional change of some value to users of the special (i.e., book) and library rates. In 1965, it relaxed the regulation on enclosures sent with books. The new rule permitted mailers in these two subclasses to enclose announcements, order forms, envelopes, and invoices as long as they dealt with books and were included in a book shipment.[80]

ON THE EVE OF POSTAL REORGANIZATION

Shortly before the U.S. Postal Service replaced the Post Office Department, Congress raised library rates and lengthened the list of eligible mailers.

While eligibility for the library privilege had grown steadily through the 1950s, the rate itself -- 4 cents for the first pound and 1 cent for each additional pound -- remained unchanged since 1948. As part of a sweeping rate hike, the administration in 1967 asked Congress to consider raising the library post to 8 cents for the first 2 pounds and 3 cents for each additional pound.[81] A House post office subcommittee reduced the library rates slightly, only to have the full committee restore them to the level of the administration's request.[82] Not all representatives favored the rate increases. At least one expressed concern that higher library postage would fall especially heavily on the small country libraries that depended on interlibrary loans for much of their material.[83] The House report enlarged eligibility only slightly, adding films narrower than 16-millimeters.[84]

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[77] *Special Postage Rates for Educational, Cultural, and Library Materials: Hearings on H.R. 4595 and H.R. 4596 before the Senate Comm. on Post Office and Civil Service*, 86th Cong., 1st sess. (1959), pp. 17-28.

[78] S. Rep. No. 1496, 86th Cong., 2d sess. (1960).

[79] *Cong. Rec.*, June 18, 1960, pp. 13197-13198; July 2, p. 15756; Act of July 14, 1960, 74 *Stat.* 479; *Fed. Reg.*, Sept. 21, 1960, p. 9048. See also 1960 *PMG Annual Report* 113-114.

[80] *Fed. Reg.*, June 4, 1965, p. 7392.

The major changes came from the Senate. The ALA witness, Edmon Low, convinced a friendly Senate committee to scale back the proposed increase in the library rate. Low pointed out that libraries would suffer from increases in all rates, particularly book and library postage. He reported the results of an ALA state-by-state survey that showed higher rates would impair interlibrary loans and especially loans to readers in rural areas. Furthermore, Low argued that higher book postage would be passed along by publishers and cut further into libraries' tax-supported fixed budgets.[85] The rate finally adopted -- 5 cents for the first pound, and 2 cents for each additional pound -- emerged from the Senate post office committee after extensive public hearings.[86] At the old library rate, a 10-pound package cost 13 cents; at the new rate, 23 cents.[87] The Senate committee also extended the preferred fourth-class rate to a new category of materials and mailers -- museums and herbaria.[88] The conference reports retained this provision and it passed without comment during the floor debates.[89]

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[81] 1967 PMG Annual Report 98.

[82] "Postal Rate Revision," ALA Bulletin, September 1967, p. 923; Postal Revenue and Federal Salary Act of 1967: Hearings on H.R. 7977 before the House Comm. on Post Office and Civil Service., 90th Cong., 1st sess. (1967), pp. 11, 36.

[83] Cong. Rec., Oct. 11, 1967, p. 28634.

[84] Postal Revenue and Federal Salary Act of 1967: Hearings on H.R. 7977 before the House Comm. on Post Office and Civil Service., 90th Cong., 1st sess. (1967), p. 144.

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[85] "Postal Rates Increase Modified for Libraries," *ALA Bulletin*, January 1968, p. 29.

[86] "Postal Rates on Library, Education Materials Go Up," *Scholastic Teacher*, Feb. 1, 1968, p. 4.

[87] *Postal Rates: Hearings on H.R. 7977 before the Senate Comm. on Post Office and Civil Service*, 90th Cong., 1st sess. (1967), pp. 431-440.

[88] S. Rep. No. 801, 90th Cong., 1st sess. (1967), p. 13.

[89] The law entitled museums and herbaria to send "museum materials, specimens, collections, teaching aids, printed matter, and interpretative materials intended to inform and to further the education work and interests of museums and herbaria. . . ." Act of Dec. 16, 1967, 81 *Stat*. 620. See also *Fed*. *Reg*., Jan. 3, 1968, p. 27.

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Preferred Rates Under the Postal Reorganization Act

Although the Postal Reorganization Act swept away the U.S. Post Office Department and revamped the ratemaking process, it only slightly altered the status of preferred mailers. Congress, after all, reaffirmed the public service philosophy enunciated in 1958; it retained control over the preferred classifications even though it relinquished control over other rates; it provided little guidance to the new postal establishment in deciding eligibility; and, as before, it continued to extend the list of preferred mailers. Thus, all the problems connected with the preferred classes under the old Post Office Department survived the transformation of the institution. Exacerbating the situation, the remarkable growth of the nonprofit sector, with its sophisticated fundraising methods, increased the demands placed on the preferred categories.

LEGISLATIVE HISTORY OF THE PREFERRED CLASSES

The origins of the U.S. Postal Service have been recounted often enough that the general details need not be repeated here.[1] The legislative course of the preferential rate provisions does, however, deserve attention.

Background

Of the developments that propelled postal reorganization -- the arrival of a politically astute postmaster general, recurring deficits, a mail handling crisis in Chicago, trouble with unions and others -- few directly involved preferential rates. The deficits, of course, stemmed partly from below-cost postage. Soon after he took office as postmaster general, Lawrence F. O'Brien pointed to rising volumes of nonprofit mail as contributing to the shortfall. In a 1967 speech before the Magazine Publishers Association and the American Society of Magazine Editors, O'Brien proposed converting the Post Office Department into a nonprofit government corporation. President Lyndon B. Johnson took the first formal step toward reorganization by appointing Frederick R. Kappel, retired chairman of AT&T, to head a Commission on Postal Reorganization.

The Kappel Commission carefully distinguished between subsidies to the postal service as a whole, which should be eliminated, and those to specified groups, which it characterized as the "real 'public service' subsidies."[2] Questioning whether the postal service was the most "efficient and visible way of assisting these [charitable and educational] groups," the commission nevertheless recommended a method of funding preferred rates if Congress wished to continue them. It advised against using general tax revenues because "such a procedure would mean retention of the appropriation link with the Congress." Instead, the commission proposed "that such costs be added to the other expenses of the Corporation and spread among postal customers in the same manner as other institutional costs." A ceiling on such subsidies would prevent mailers paying regular rates from shouldering too heavy a burden.[3] The commission predicated its recommendation on the belief that subsidies for preferred rates constituted only a small part of total postal costs, an estimated 3.8 percent.[4]

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[1] See generally Harold E. Dolenga, "An Analytical Case Study of the Policy Formulation Process (Postal Reform and Reorganization)," (Unpublished Ph.D. dissertation, Northwestern University, 1973); Alan L. Sorkin, The Economics of the Postal System (Lexington, MA: D.C. Heath & Co., 1980); and John T. Tierney, Postal Reorganization: Managing the Public's Business (Boston: Auburn House Publishing Co., 1981).

The Preferred Classes in Congress

President Richard M. Nixon authorized his postmaster general, Winton M. Blount, to review the Kappel Commission's findings. Legislation finally submitted to Congress retained much of the basic structure outlined by the commission, but departed from its recommendations involving the preferred rates.[5] Blount urged Congress to retain the subsidies and appropriate sufficient funds to make up the revenue forgone. "If the Congress should fail to appropriate the necessary funds," he told a House committee, "the Postal Service is required to adjust rates for free and reduced-rate mail patrons by an amount necessary to yield equivalent funds."[6]

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[2] President's Commission on Postal Organization, Towards Postal Excellence (Washington, D.C.: Government Printing Office, 1968), pp. 49-50.

[3] Ibid., p. 62.

[4] Ibid., pp. 135-142.

Unlike the Kappel Commission, the Nixon administration preferred to leave Congress in charge of the subsidized rates. Even before the White House sent its bill to Congress, hearings had indicated stiff resistance to eliminating congressional control over the public service aspects. Former Senator Frank Carlson, long-time member of the post office committee and advocate of low rates for preferred mailers, testified on behalf of retaining the public services even if the post office were converted to a business-like corporation.[7] Like the administration, the House planned to continue the preferred rates indefinitely. The House report on reorganization declared that "The same groups that enjoy the benefits of free or reduced rate mail today will continue to enjoy these benefits until changed by law, if and to the extent that Congress appropriates to the

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[5] For the President's message, see H.R. Doc. No. 91-313, 91st Cong., 2d sess. (1970).

[6] Post Office Reorganization, Part One: Hearings before the House Comm. on Post Office and Civil Service, 91st Cong., 1st sess. (1969), p. 334.

[7] Postal Modernization, Part One: Hearings on H.R. 4 and H.R. 11750 before the Senate Comm. on Post Office and Civil Service, 91st Cong., 1st sess. (1969), pp. 579-586.

Postal Service the revenue foregone by the free or reduced rates."[8] Congress should retain control, the House post office committee explained, because these rates entailed "questions of policy that are less appropriate to the expertise of a ratemaking commission than to a congressional determination of the public interest."[9]

The Senate post office committee took a different stand. Its report proposed to phase out the preferences and turn ratemaking over to the Postal Service and the rate commission -- with some guidance from the committee:

> Notwithstanding its rejection of a proposal to impose its views on the new Postal Service by law, the committee agreed that this report should specifically express committee concern over the rates to be established for certain classes of mail. Accordingly, the committee alerts the Rate Commission established by this bill to the public service which certain preferred rates have historically performed.
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> Reduced rates for within-county newspapers, for libraries, for books, and for associations of rural electrification co-ops were enacted for very good reason -- that the public generally benefits from such rates.[10]

Senator Gale W. McGee, chairman of the post office committee, explained that its version of the bill allowed preferred mailers up to ten years to adjust to rate increases.[11]

Not surprisingly, the conference report compromised the issue. It gave preferred mailers ten years to reach a postage level that did not "exceed the direct and indirect postal costs attributable to mail of such class or kind (excluding all other costs of the Postal Service). . . ."[12] McGee told the Senate that the loss created by the reduced rates "will be made up by direct congressional appropriation and if Congress fails to appropriate the money, the Postal Service may increase the rates."[13] One of the Senate conferees noted that even after ten years the law "will afford a degree of preferential treatment to certain types of charitable nonprofit organizations which currently depend upon reduced rates to operate their vital services." He singled out those groups "engaged in health research and rehabilitation" as especially important.[14] Another took comfort in the realization that Congress could, in the ten years it took to phase out the subsidy, rewrite the law to protect the preferred rates.[15]

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[8] H.R. Rep. No. 91-1104, 91st Cong. 2d sess. (1970), p. 11.

[9] *Ibid*., p. 18.

[10] S. Rep. No. 91-912, 91st Cong., 2d sess. (1970), p. 12. See also *Postal Modernization: Hearings on S. 3842 before the Senate Comm. on Post Office and Civil Service*, 91st Cong., 2d sess. (1970).

[11] *Cong. Rec.*, June 26, 1970, pp. 10031-10032.

On August 12, 1970, President Nixon signed the Postal Reorganization Act, and eleven months later the Post Office Department became the U.S. Postal Service. The law gradually reduced the preferential rates for in-county delivery of periodicals, the publications and third-class mailings of certain nonprofit organizations, and library materials. Even after higher postage had been phased in, minor rate preferences would remain because revenue from these preferred classes would only have to cover the "direct and indirect postal costs attributable" to them. The pace of the phase-in depended on annual congressional appropriations.[16]

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[12] Conf. Rep. on H.R. 17070, Cong. Rec., Aug. 3, 1970, p. 27070.

[13] Cong. Rec., Aug. 3, 1970, p. 26954.

[14] Ibid., p. 26957.

[15] Cong. Rec., Aug 6, 1970, p. 27599. For comments on the library rate see, e.g., ibid., June 16-18, 1970, pp. 19850, 19855, 20495; on in-county, see, e.g., ibid., June 16-18, pp. 20207, 20447, 20457, and June 29-30, p. 22313; on nonprofit rates, see, e.g, ibid., June 16-18, pp. 19846, 19855, 20448, 20496; and on preferred mailers generally, see, e.g., ibid., June 16-18, pp. 20450, 20483-84 and June 29-30, p. 22338.

MAJOR REVIEWS AND CONGRESSIONAL CHANGES IN POLICY

The Postal Reorganization Act ended decades of relatively stable rates for nonprofit organizations, library materials and in-county delivery of periodicals. Even before passage of the PRA, preferred mailers recognized the danger in reducing the role of Congress, which had always been friendly, and they lobbied accordingly.[17] One trade journal presciently observed that the reorganization plan "would mean an annual fight in Congress."[18] The new process not only necessitated yearly appropriation hearings and debates but also prompted occasional policy reviews, which sometimes led to changes in the act itself.[19]

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[16] Act of Aug. 12, 1970, 84 Stat. 719, 762-763.

[17] See, e.g., Publisher's Weekly, May 11, 1970, p. 23; ibid., June 29, 1970, p.76.

[18] Susan Wagner, "Pending Bills Threaten Postal Rates for Books," Ibid., June 8, 1970, pp. 128-129.

The 1974 Amendments

Upset with the first ratemaking proceeding held under the PRA, preferred mailers turned to the courts and Congress. Book publishers and the American Library Association complained that the PRC had failed to fairly weigh the cultural value of materials in the special fourth classes (book and library rates), as the PRA prescribed.[20] But an appellate court rebuffed this claim, observing that "If petitioners are aggrieved by asserted insensitivity to the unquestionably major contributions made to our civilization by the type of mail matter for which they are spokesmen, the remedy is legislative."[21]

Preferred mailers and others discovered that they could obtain a sympathetic hearing in Congress. Key congressional leaders regretted having relinquished direct control over postal affairs, and they began introducing legislation to modify the reorganizaton act.[22] The House post office committee, for example, reported a bill in 1973 to extend the phased increases for both regular and preferred mailers, and to establish permanently reduced rates for nonprofit publications. The committee also urged Congress to underscore the importance it attached to the "educational, cultural, scientific, and informational value" of certain mail matter. Much of the testimony presented during hearings focused on the special value of "small regular rate publications, nonprofit publications, and libraries and educational institutions."[23] The bill died after a debate in which one representative chastised the Postal Rate Commission for ignoring "55 years of congressional policy concerning the rate treatment of nonprofit community oriented organizations."[24]

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[19] Focusing on the policy and administration of the preferred classes, this section pays relatively little attention to the annual appropriations debates and the several ratemaking proceedings. Although they generated reams of data and provided mailers with a forum in which to present their cases, most of the critical information and arguments were also aired in the congressional reviews, which will be covered here. For convenient summaries of year-by-year developments, see Congressional Quarterly Almanac. Some trade journals cover postal developments for the preferred mailers; for in-county, see Publishers' Auxiliary and Editor & Publisher; for nonprofit mailers, see Association Management; and for library rates, see Publishers Weekly.

[20] Susan Wagner, "AAP and Allies Challenge Postal Rate Decision," Publisher's Weekly, July 17, 1972, p. 92.

[21] Association of American Publishers, Inc. v. U.S. Postal Service, 485 F. 2d 768, 775 (D.C. Cir. 1973).

In its next session, Congress revived some of the proposals it rejected in 1973 and adopted them as part of amendments to the reorganization act. The legislation, framed by the Senate post office committee, extended the phased increases over a 16-year period instead of the original ten for preferred second-class, nonprofit third-class and library mailers. Regular second-class mailers received a shorter extension. The Senate committee argued that rate increases under the

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[22] Sorkin, The Economics of the Postal System, pp. 167-169.

[23] H.R. Rep. No. 93-369, 93rd Cong., 1st sess. (1973), p.. 3-6; John Fischer, "The Easy Chair: A Threat of Death by Mail," Harper's, May 1973, pp. 30-33.

[24] Cong. Rec., July 23, 1973, p. 25477; "House Kills Postal Bill: ALA, AAP Lose Round One," Publisher's Weekly, Aug. 6, 1973, p. 29.

PRA had far exceeded Congress's expectations, hurting mailers who had long been protected in postal policy. The committee projected that second-class nonprofit rates might rise by 700 percent at the end of the phase-in period called for by the PRA.[25] A minority report opposed the bill on the grounds that big, profitable publishing houses would be the main beneficiaries, and that preferred mailers would still enjoy a substantial subsidy even after all increases were phased in.[26] The measure passed easily after extensive debate, much of it praising the contributions of nonprofit organizations, the work of libraries and the role of the rural press.[27]

Two questions of eligibility arose during the deliberations. A senator offered an amendment to add volunteer fire and ambulance companies to the list of mailers entitled to reduced second- and third-class rates. The amendment was withdrawn after Gale McGee, chairman of the Senate post office committee, assured its sponsor that these companies qualified as philanthropic as long as they were not primarily social clubs. A Maine senator then inquired whether fishermen, treated as equivalent to farmers under some laws, could qualify as agricultural for the reduced rates. The rationale for one applied to the other, he said; better communication among members of the industry improved the production of food for society. "It seems entirely logical," McGee replied.[28]

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[25] S. Rep. No. 93-765, 93rd Cong., 2d sess. (1974).

[26] Ibid.; Cong. Rec., May 9, 1974, pp. 14054-14056.

[27] Cong. Rec., May 9, 1974, pp. 14050-14060, 14075-14078; June 19, pp. 19802-19817; Act of June 30, 1974, 88 Stat. 287-288. See also Susan Wagner, "Congress Acts to Ease Rates for Book Mailers," Publisher's Weekly, July 1, 1974, pp. 22-23.

More Preferred Mailers: The 1976 Amendments

Soon after passage of the 1974 amendments to the reorganization act, Congress began working on a variety of proposals that eventually expanded eligibility for preferred rates. This round of proceedings was triggered primarily by "the ruling of a single administrative law judge for the Postal Rate Commission [that] threatened to increase mailing rates for local [i.e., in-county] newspapers by 250 per cent, books by 96 per cent, magazines by 121 per cent and nonprofit publications by 132 per cent," Senator Barry Goldwater wrote.[29] Goldwater and others believed that ratemaking under the PRA did not adequately consider the traditional value attached to certain mail matter.[30] Preferred mailers strongly supported the provision of the 1976 law that required the Postal Rate Commission to consider "the educational, cultural, scientific and informational value to the recipient" in setting rates.[31]

Extending the library rate to publishers when they mailed books to libraries or schools was the most important change relating to preferred rates in the 1976 law.[32] At least since the 1940s, librarians had lobbied alongside book publishers to keep the book rate as low as possible. (See chapter five.) Librarians argued that publishers passed along mailing costs when sending books to libraries, reducing libraries' limited book-buying budgets. A House report endorsing the proposed extension of library rates to book publishers explained that

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[28] Cong. Rec., May 9, 1974, pp. 14068-14070.

[29] Ibid., Aug. 24, 1976, p. 27413.

[30] Ibid., p. 27414.

[31] Act of Sept. 24, 1976, 90 Stat. 1303, 1311; Cong. Rec., Sept. 10, 1976, p. 29748; Susan Wagner, "Book World Hails Passage of McGee Postal Bill," Publisher's Weekly, Sept. 13, 1976, p. 49. For background on the 1976 amendments, see generally "Moves in Congress to Restructure the U.S. Postal Service: Pro & Con," Congressional Digest, November, 1976.

> Libraries and schools currently receive at least half their books by mail. As a result, every dollar paid for book postage further erodes library and school budgets. The situation is worse for small rural libraries and schools which receive an estimated 90 percent of their books by mail. Under this amendment, these libraries would benefit from the lower rate.[33]

Extending the preferred fourth-class rate to commercial publishers was justified by the indirect benefits accruing to libraries. This modification of the library rate was expected to cost about $5 million.[34] Shortly after the 1976 amendments passed, librarians and publishers began lobbying for an administrative interpretation or a legislative action that allowed libraries to return materials to publishers at the library rate.[35]

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[32] 90 Stat. 1312.

[33] H.R. Rep. No. 94-391, 94th Cong., 1st sess. (1975), p. 12; Susan Wagner, "Postal Bill Before House Revives Public Service Idea," Publisher's Weekly, Sept. 1, 1975, p. 23. This bill also eliminated an anomaly; films, sound recordings, and other library materials had long been entitled to go at the library rate when sent by commercial producers and distributors to libraries and nonprofit organizations. The 1976 amendment added books. Susan Wagner, "AAP Acts on Four Fronts Dealing with Postal Matters," Publisher's Weekly, Jan. 17, 1977, pp. 25-26.

[34] Cong. Rec., Sept. 10, 1976, p. 29743.

The 1976 PRA amendments expanded and clarified eligibility for reduced rates in other ways. The law entitled one publication of a state's conservation or wildlife agency to pass at the nonprofit second-class rate.[36] A House report explained that such advertising-free publications had been mailed at the regular rates, straining fish and game revenues.[37] Another House amendment clarified the meaning of "agricultural" by stipulating that it embraced harvesting marine resources; this had first been suggested during deliberations on the 1974 amendments. Moreover, the 1976 changes provided that "agricultural organizations or associations shall include any organization or association which collects and disseminates information or materials relating to agricultural pursuits."[38]

Commission on Postal Service, 1977

Among its many provisions, the 1976 PRA amendments created an independent commission to study the Postal Service. The commission sponsored studies and conducted extensive hearings at which various preferred mailers testified. As before, the National Easter Seal Society for Crippled Children and Adults argued that it and similar organizations relied on reduced rates to obtain contributions. Its witness reported that the Easter Seal Society had experimented with other media and channels for solicitations, but had found all inferior to the mails. Increased postage, therefore, would force cutbacks in the society's services to crippled children and adults.[39] The National Newspaper Association asked the commission to consider the valuable role of community papers in the communication system. Many small papers used the mails for most of their circulation, the NNA spokesman said, and below-cost postage was a legitimate public service function.[40] Not all the witnesses argued for the continuation of the preferred rates. The American Business Press, for example, complained that magazines enjoying reduced second-class rates carried many pages of advertising in competition with commercial publishers.[41]

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[35] Wagner, "AAP Acts on Four Fronts," p. 25.

[36] 90 Stat. 1311.

[37] H.R. Rep. 94-391, 94th Cong., 1st sess. (1975), p. 11.

[38] Cong. Rec., Sept. 10, 1976, p. 29749; 90 Stat. 1311.

The commission estimated that 110,000 nonprofit groups were using the preferred rates. It recommended that "Congress establish a new phasing schedule to begin in July 1987, under which nonprofit mailers would begin paying their share of institutional costs."[42] The proposed graduated increases would eliminate the continuing appropriation for preferred mailers by 1997.

Adding Political Committees

The last major preferred mailer -- qualified political committees -- was added as one of several 1978 amendments to the Overseas Citizens Voting Rights Act. Similar legislation had been offered in 1971 and 1975. As the House post office committee explained in 1975, federal campaign laws imposed new financial requirements on state and national political parties. With contribution limits, the parties had to expand their bases of support with small donors. Moreover, reaching many people through the mails would "encourage the average citizen to play a greater part in the political process. . . . This can be done most effectively by direct mail, but increased postal rates for third-class mail make this a most costly operation."[43]

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[39] Commission on Postal Service, Report (Washington, D.C.: Government Printing Office, 1977), vol. 3a, pp. 632-637.

[40] Ibid., vol. 3c, pp. 2764-2768.

[41] Ibid., vol. 3b, p. 1369.

[42] Ibid., vol. 1, p. 68. Although this sentence mentions only nonprofit mailers, the context suggests that the commission intended to eliminate all preferred rates.

The House framed the new mailing preference. An early draft of the proposal would have extended the preferred rates to candidates for federal office, not political committees. Its sponsor presented three reasons for underwriting the distribution of campaign literature: voters would receive more information about candidates; the increased publicity would produce a larger voter turnout; and reducing the "mailing costs for all candidates would help neutralize the advantages of incumbency."[44] The final House version, however, took a different form. It extended nonprofit third-class rates to "qualified political committee[s]," which meant "a national or State committee of a political party, the Republican and Democratic Senatorial Campaign Committees, the Democratic National Congressional

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[43] H.R. Rep. No. 94-391, 94th Cong., 1st sess. (1975), pp. 11-12.

[44] Cong. Rec., June 14, 1978, p. 17707.

Committee, and the National Republican Congressional Committee. . . ."[45] This amendment to the voting rights act excited little opposition. One senator, however, said he "did not believe the Government should subsidize any political mailings. I believe existing provisions of law should be amended so as to preclude the subsidization of political mailings by labor unions and by other so-called nonprofit organizations."[46]

Within a year, Congress limited the mailing privilege for political committees so as to exclude small and emerging parties. The House debate, where the provision arose as an amendment to a postal appropriations bill, revealed two reasons for the limitation. Some representatives said the cost was much higher than originally projected, while others complained about subsidizing the mailings of such groups as the communists and the Nazis.[47] The bill passed, restricting the mail preference to the political committees of major and minor parties.[48] Thus, any party whose presidential candidate failed to receive at least 5 percent of the vote in the last election no longer qualified for the reduced bulk mailing rate. The Postal Service notified about 30 political committees that they were no longer entitled to the low rates. Predictably, several sued and a district court declared this part of the law unconstitutional. Government had no obligation to offer postal privileges, the court explained, but once it did the privileges had to be accorded without regard to "the content of the speech or the popularity of the speaker."[49]

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[45] Act of Nov. 4, 1978, 92 Stat. 2535, 2538-2539. The act defined national committee as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level. . . ." An analogous definition was used for state committees.

[46] Cong. Rec., Oct. 13, 1978, p. 36682. See also H.R. Rep. 95-1568, 95th Cong., 2d sess. (1978), p. 21; Cong. Rec., Sept. 19, 1978, pp. 30173-30177. In 1975 and 1978, a county Republican committee obtained an injunction to prevent a labor group, which held a nonprofit mailing permit, from sending campaign literature on behalf of a Democratic candidate. A court found this arrangement to violate Postal Service rules on cooperative mailings. Owen v. Mulligan, 640 F. 2d 1130 (9th Cir. 1981).

[47] Cong. Rec., July 13, 1979, pp. 18453-18461.

[48] Act of Sept. 29, 1979, 93 Stat. 559, 562.

The Postal Service adjusted its regulations to comport with the ruling; reduced rates were again available to the state and national committees of any political party.[50] A later decision extended the preferred rates beyond the statutory language. A Cincinnati citizens group that "expressly eschews affiliation with any state or national political organization" was denied the reduced rates. A court upheld the group's contention that limiting the preferred rate to only national and state political committees abridged its freedom of speech on the basis of its ideas.[51] Not all litigation involving the reduced rates for political committees raised questions of constitutional dimensions. For example, the law made political committees -- not candidates -- eligible for the preferred rates, but, in at least one case, a candidate used a party's mailing permit to distribute campaign literature.[52]

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[49] Greenberg v. Bolger, 497 F.Supp. 756, 776 (E.D.N.Y. 1980). See also Comment, "Elections -- Denial of Reduced Postal Rates to Minor and New Political Parties Constitutes a Violation of the First and Fourteenth Amendments," 57 North Dakota Law Review 479 (1981).

[50] Siebert v. Conservative Party of New York State, 724 F. 2d 334, 335 (2d Cir. 1983).

[51] Spencer v. Herdesty, 571 F.Supp 444, 447 (S.D. Ohio 1983); Spencer v. U.S. Postal Service, 613 F.Supp. 990 (S.D. Ohio 1985).

Reviews and Criticisms Through 1982

The need for regular appropriations kept attention focused on the status of preferred rates under the reorganization act. Trade journals, of course, charted the ups and downs of appropriation and ratemaking proceedings.[53] At the same time, the general press followed -- and often criticized -- the burgeoning use of nonprofit rates. Congress monitored the effects of reorganization through the annual appropriations process and, in 1982, conducted a separate examination.

Some opinion journals and business magazines sniped at nonprofit mailers. In the article "How Your Stamps Help Buy Jacques Cousteau an Asparagus Fork," Washington Monthly claimed that reduced rates, originally created to help charities, had "been extended to just about anybody equipped with a proclamation of lofty purpose."[54] The article singled out National Geographic, Mother Jones, Smithsonian and Ms. magazine. Ms., it observed scornfully, "topped them all by winning non-profit status merely because it was not making money: there was no pretense of 'educational' or 'agricultural' service."[55] Forbes echoed those sentiments, noting that many such magazines reaped handsome advertising profits -- obtained in competition with commercial publications -- for the sponsoring organization.[56] New Republic objected that the categories of qualified nonprofit organizations "are much too slippery to keep out the undeserving." It complained that the Moral Majority, rejected as an educational organization, later qualified as an educational, philanthropic, and religious group, when, in the estimation of the New Republic, it was largely political.[57]

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[52] Siebert v. Conservative Party of New York State, 565 F.Supp. 56 (S.D.N.Y. 1983), affirmed, 724 F. 2d 334 (2d Cir. 1983), cert. denied, 104 S.Ct. 2363 (1984). The central issue was whether a private cause of action existed from violation of the statute; the court found none.

[53] See, e.g., Howard Fields, "Postal Rate Commission Recommends 8% Rise for Book Rate, 21% for Library Rate," Publisher's Weekly, March 6, 1981, p. 16; "Lobbyists Against Budget Cuts Encounter Mixed Results," ibid., May 1, 1981, p. 16, 24; "Library Rate to Drop Under New Postal Plan," ibid., Oct. 16, 1981, pp. 14-16; George Brandon, "In-County Postal Rates Hiked By About 25%," Editor & Publisher, Jan. 9, 1972, p. 15; "Mapping the History of Nonprofit Rates," Association Management, June 1985, p. 64.

In 1980, the Congressional Budget Office sketched a picture of the use and cost of the reduced rates. CBO Director Alice M. Rivlin told a Senate committee that nonprofit reduced rates covered about half the cost of delivery for each piece; that for library materials, 65 percent; and that for in-county publications, 50 percent. About three-fourths of the revenue forgone subsidy went to cover nonprofit mailings. Religious organizations were the leading users of nonprofit rates, followed by educational, scientific, and charitable groups. Despite the nonprofit organizations' heavy use of the reduced rates, CBO concluded that most did not appear dependent on them. But, Rivlin acknowledged, reduced rates were "a significant fund-raising saving for organizations that rely heavily on mail solicitation as a source of income." In terms of the recipients, CBO found that most nonprofit mail was sent to upper income households.[58]

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[54] "How Your Stamps Help Buy Jacques Cousteau an Asparagus Fork," Washington Monthly, January 1980, p. 38.

[55] Ibid., p. 39.

[56] William Baldwin, "Those 'Nonprofit' Profits," Forbes, Sept. 1, 1980, p. 98.

[57] "Sectarian Subsidy," New Republic, Dec. 23, 1981, p. 10.

Preferred mailers were amply represented in 1982 when the House post office committee reviewed the effectiveness of the PRA ten years after its implementation. Most of the presentations consisted largely of updated figures and arguments: The American Library Association reported that rural library services faced cutbacks because of rising postage, and that patrons increasingly paid for interlibrary loans. Publishers of religious periodicals testified that they posed little threat to commercial publications in the scramble for advertising, and that higher postage would undermine their humanitarian efforts. The International Labor Press Association also emphasized that labor publications sought little advertising, and that some journals faced extinction because of increased delivery costs. The Alliance of Third-Class Nonprofit Mailers reminded lawmakers that its member organizations performed services that would otherwise fall upon government. The American Newspaper Publishers

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[58] Treasury, Postal Service and General Government Appropriations, FY 81, Part One: Hearings on H.R. 7583 before the Subcomm. on Treasury, Postal Service and General Government, Senate Comm. on Appropriations, 96th Cong., 2d sess. (1980), pp. 705-715.

Association and National Newspaper Association joined together in reminding Congress of the historical imperative to protect rural and community newspapers. The small nonprofit mailers further noted that frequent proceedings before the Postal Rate Commission and Congress taxed their meager resources.[59]

ADMINISTRATION BY THE U.S. POSTAL SERVICE

The reorganization act did not alter eligibility for preferred mailers, nor did congressional deliberations leading to its passage furnish guidance in administering the in-county, nonprofit and library rates. As before, the two preferred nonprofit classifications proved most vexing to administer, and the subsidy for the special third-class mail climbed rapidly (see Table 5.1). Administering the preferred rates for library materials and in-county delivery of periodicals created fewer problems.[60]

Nonprofit Eligibility

Even as Congress was considering postal reorganization, the General Accounting Office was checking the qualifications of nonprofit mailers using the reduced rates. Scanning a list of 10,400 organizations granted preferred rates at five post offices, the GAO selected 1,135 of questionable eligibility for further review. It

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[59] Effectiveness of the Postal Reorganization Act of 1970, Part Two: Joint Hearings before the Subcomm. on Postal Personnel and Modernization of the House Comm. on Post Office and Civil Service, 97th Cong., 2d sess. (1982), pp. 226-269, 441-491, 764-770.

[60] To the extent that the Federal Register is a barometer of administrative difficulties, presorting requirements were the major problem. Fed. Reg., Dec. 7, 1976, p. 53478; July 31, 1979, p. 44896.

Table 5.1

Analysis of Revenue Forgone Subsidy by Class of Mail from 1972 to 1983
(in millions of dollars)

Year	In-County			2nd Nonprofit			3rd-Nonprofit			Library Rate			TOTAL SUBSIDY
	Rev.	Sub.	Total	Rev.	Sub.	Total	Rev.	Sub.	Total	Rev.	Sub.	Total	
1972	9.4	26.5	35.9	13.6	58.6	72.2	79.3	134.1	213.4	4.0	8.3	12.3	227.5
1973	9.3	28.9	38.2	16.9	64.0	80.9	90.6	129.0	219.6	4.1	9.7	13.8	231.6
1974	10.3	25.0	35.3	20.7	71.5	92.2	93.5	174.4	267.9	5.0	13.9	18.9	284.8
1975	11.4	29.8	41.2	25.0	83.5	108.5	99.7	247.5	347.2	6.2	17.0	23.2	377.8
1976	11.4	35.9	47.3	28.6	98.1	126.7	109.7	293.3	403.0	7.2	23.0	30.2	450.3
1977	14.1	40.2	54.3	40.1	105.9	146.0	134.7	338.2	472.9	16.3	29.0	45.3	513.3
1978	18.1	44.0	62.1	51.7	109.9	161.6	166.0	386.7	552.7	20.4	39.1	59.5	579.7
1979	20.9	46.8	67.7	63.9	124.2	188.1	212.9	423.1	636.0	21.9	54.5	76.4	648.6
1980	27.7	41.1	68.8	99.7	114.4	214.1	259.4	471.8	731.2	28.7	78.0	106.7	705.3
1981	34.5	40.0	74.5	116.7	102.1	218.8	301.2	419.5	720.7	32.0	69.6	101.6	631.2
1982	37.7	72.5	110.2	153.5	62.7	216.2	425.0	450.7	875.7	40.0	47.2	87.2	633.1
1983	43.6	46.1	89.7	123.2	102.2	225.4	442.9	523.1	966.0	43.8	34.0	77.8	705.4

Source: Annual Reports of the United States Postal Service, 1972 through 1983.

"concluded that 115 of the 1,135 nonprofit organizations -- 84 business leagues, 21 citizens' and civil improvement associations, and 10 social clubs -- were not eligible for reduced rates." Reviewing IRS files, GAO determined that the "primary purpose and activities of such organizations" disqualified them. The Post Office Department's own rules had long declared business leagues, citizens' and civic improvement associations and social clubs ineligible. (See chapter four.)[61]

The GAO audit prodded the Post Office Department to clarify the standards used in determining admission to the special third class. In January 1970, the department announced that religious, educational, scientific, and philanthropic organizations granted tax exempt status under section 501(c)(3) of title 26, or fraternal groups under section 501(c)(8), "will be considered as qualifying for the special third-class rate unless the available evidence discloses some disqualification."[62] This ratified in regulations what the post office generally had done in practice. (See chapter four.) The department also repeated the list of nonprofit organizations that did not qualify.

The GAO's suggestion that the post office follow the lead of the IRS was taken too literally, as Postmaster General Blount acknowledged. "Many postmasters at Postal Service Centers have interpreted this regulation to provide for blanket approval of all applications which include evidence the organization has been exempted from payment of Federal income taxes under" the provisions of the Internal Revenue Code noted above.[63] To standardize administration of the nonprofit rates, the Office of Mail Classification devised definitions of the eight categories of eligible organizations. The definitions, used for both second- and third-class reduced rates, were disseminated to the 64 postal service centers.[64]

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[61] U.S. General Accounting Office, "Determination of Nonprofit Organizations' Eligibility for Reduced Postage Rates Should be Improved," (1972), p. 14.

[62] Fed. Reg., Jan. 24, 1970, pp. 1013-1014; Dec. 23, 1970, pp. 19434-19435.

The Postal Service went a step further, proposing in August 1972 that the definitions become part of the official regulations.[65] After receiving public comments, the Postal Service modified its proposals to "include education-oriented organizations in addition to schools, colleges, universities, etc., such as, for example, Parent Teachers Associations, symphony orchestras, museums and zoos"; to include animal welfare leagues under the philanthropic category; and to bring its definitions of agricultural, labor and veterans organizations into line with "similar definitions in use by other agencies." The rules also stipulated that "action" organizations could not qualify as religious, educational, scientific, or philanthropic.[66] Furthermore, the Postal Service leaned heavily on the decisions of the IRS:

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[63] Letter from Blount to the GAO, July 7, 1971, reprinted in the GAO, "Determination of Nonprofit Organizations' Eligibility," p. 32.

[64] Ibid., p. 33.

[65] Fed. Reg., Aug. 26, 1972, pp. 17423-17424.

> Generally, an organization granted income tax exemption under title 26, United States Code, section 501(c) (3), as a religious, educational, scientific, or charitable (philanthropic) organization[;] under section 501(c) (5) as an agricultural or labor organization; under 501(c) (8) as a fraternal organization; or under 501(c) (19) as a veterans organization will be considered as qualifying for the special third-class rate.[67]

The definitions finally adopted "more clearly express historical interpretations by the Postal Service than the proposed regulations and, where possible, parallel similar definitions in use by other Government agencies." The definitions of religious, educational, scientific, philanthropic, agricultural, labor, veterans and fraternal organizations found in the current Domestic Mail Manual vary little from those given in 1973.[68]

A rule adopted in 1977 suggested one reason why the Postal Service hesitated to automatically defer to IRS determinations in deciding eligibility. In response to a comment on a proposed rule, the Postal Service explained that "There are thousands of small qualifying organizations which apply for nonprofit second- and third-class rates which do not have IRS exemptions and have no need for such." Requiring an IRS exemption would be unnecessary and costly for some eligible mailers, it added. "For those organizations that do seek IRS exemptions, however, . . . the Postal Service generally acts in a parallel fashion to IRS, though the regulation retains the possibility of an independent administrative choice, in line with the authority implied by statute."[69]

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[66] Ibid., Jan. 15, 1973, pp. 1566-1567.

[67] Ibid., p. 1566.

[68] Compare Domestic Mail Manual sec. 623.23 to Fed. Reg., Jan. 15, 1973, pp. 1566-1567. The only difference of more than a few inconsequential words is that DMM sec. 623.235(b) has language not found in 1973: "The term agricultural also includes any nonprofit organization whose primary purpose is collecting and disseminating information or materials related to agricultural pursuits," did not appear in the 1973 rules.

Litigation of Nonprofit Eligibility

As the Postal Service refined and articulated its rules governing eligibility, a few mailers began seeking redress in the courts. Where there had been only one reported court decision dealing with eligibility for the nonprofit rates before 1973, such cases became more frequent after that date. In 1973, a district court upheld the revocation of the Sierra Club's nonprofit second- and third-class mailing permits because its primary purpose was conservation, not education.[70] About the same time, the Postal Service initiated proceedings to revoke the National Rifle Association's special mailing permits. The administrative law judge acknowledged that NRA had a number of educational features, but that it was primarily a sportsperson's organization. Furthermore, the Postal Service ruled, NRA's lobbying activities made it an action organization, and thus ineligible for the reduced rates.[71]

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[69] Fed. Reg., June 22, 1977, p. 3192.

[70] Sierra Club v. U.S. Postal Service, 386 F.Supp. 1102 (N.D. Cal. 1973).

Not long thereafter, however, the Postal Service restored action organizations to the nonprofit rates. This change was prompted by the Tax Reform Act of 1976 and the comments of the court in the National Rifle Association case.[72]

Curbing Unauthorized Mailings at Nonprofit Rates

In 1975, the Postal Service confronted the problem of nonprofit organizations using their special postal status to send materials for other ineligible groups. Two associations -- the National Retired Teachers Association and American Association of Retired Persons — tried to mail a catalogue of pharmaceutical products for a third group, Retired Persons Services. NRTA and AARP both held third-class mailing permits; RPS, though nonprofit, did not qualify. Nonetheless, NRTA and AARP sought to mail the RPS catalogue under their permits. The Postal Service refused to accept it at the preferred rates and added a rule to the Postal Service Manual: "Cooperative mailings may not be made at the special bulk third-class rates for qualified nonprofit organizations if one or more of the cooperating persons or organizations is not entitled itself to the special rates."[73] NRTA and AARP challenged the Postal Service rule on several grounds; the court held that the rule "fully comports with the spirit of the special rate legislation and was necessary to prevent abuse of the existing program."[74]

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[71] In the Matter of the National Rifle Association of America, P.S. Docket No. 4/169 (1976); see also National Association of America v. U.S. Postal Service, 407 F.Supp. 88 (D.D.C. 1976).

[72] Fed. Reg., March 2, 1977, pp. 12069-12071; June 2, 1977, pp. 32592-32594; Act of Oct. 4, 1976, 90 Stat. 1520, 1723-1724; Postal Bulletin, Aug. 25, 1977, p. 9. The court did not reach the issue of whether action organizations were disqualified, but it did observe, "If the law judge finds that NRA does qualify as educational, philanthropic, or scientific but is ineligible for special rates as an action organization, then the issue of the authority of the Postal Service to restrict the qualifications for special rates without the approval of Congress will be ripe for review in this court." National Rifle Association v. U.S. Postal Service, 407 F.Supp. 88, 96 (D.D.C. 1976).

To facilitate enforcement of the rule banning cooperative mailings, the Postal Service began requiring clear identification of the mailer. After weighing public comments, the Postal Service decided that preferred third-class mailings had to carry the name (or a well-known designation) and return address of the permit holder on either the message or the envelope.[75] The return address of a valid permit holder, however, did not guarantee that the contents fell within the rules. For example, when a postal official heard that a political committee used its permit for an improper cooperative mailing, he simply noted that the return address was that of a qualified organization.[76] Confusion sometimes arose when qualified organizations used a variety of names in identifying their special rate mailings, particularly when they used the "name of a subpart in a more prominent manner than the name of the organization."[77]

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[73] *Fed. Reg.*, Aug. 26, 1975, p. 32709.

[74] *National Retired Teachers Association v. U.S. Postal Service*, 430 F.Supp. 141, 148 (D.D.C. 1977).

[75] *Fed. Reg.*, Feb. 4, 1977, p. 6841; Aug. 18, 1977, pp. 41634-41635.

[76] *Siebert v. Conservative Party of New York State*, 565 F.Supp. 56, 58.

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[77] *Fed. Reg.*, Sept. 12, 1980, p. 60452.

APPENDIX B

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ATTACHMENT A - Parts One and Two

PREFACE

The following pages describe how the idea of relatedness -- a notion adapted from Federal tax law -- can be applied to the task of limiting preferred-rate eligibility for nonprofit mail containing advertising. In its simplest form, it suggests a requirement that the products or services that are advertised be "related" to the nonprofit mission in order for the advertising to be eligibile for the nonprofit rate. Advertisements for unrelated items would pay the regular rate, thereby reducing appropriations in proportion to the volume of these mailings.

The parties (most notably the Third Class Mail Association) have suggested -- and we agree -- that the relatedness standard contained in the Unrelated Business Income Tax (UBIT) is an appropriate model for applying this relatedness concept.

This Appendix details the development of the UBIT standard and suggests an analogy to be applied to the Postal Service. The bulk of the first half of the Appendix describes the evolution of the UBIT since its inception in 1950. This history underscores some of the ramifications of a relatedness standard, and also suggests that nonprofit organizations have a certain familiarity with the concept. That we can presuppose some knowledge on the part of these organizations with the UBIT relatedness concept may facilitate the implementation of a similar standard in the Postal Service context. The history shows as well that the UBIT was created in response to fiscal and competitive problems also arising in the nonprofit postal sector.

The latter half of the Appendix consists mainly of our suggestions for applying those aspects of the UBIT -- drawn from its history -- which seem adaptable to the Postal Service. Thus, for second-class nonprofit mail, one of our recommendations is a *per se* rule banning all advertising in this category of mail from the preferred rate. While a *per se* rule of this kind does not coincide with the current state of the law on the UBIT, it received sufficient attention in the history of the tax law to become a fully worked-out concept; and, when combined with the traditions of second-class mail and the specific administrative problems of the Postal Service, we feel it is a supportable and workable standard for our purposes.

In third-class nonprofit mail, the Appendix summarizes some general points which are detailed in the body of the report. Applications of the relatedness concept drawn from the UBIT are developed for products and services in general, and for the specialized problems of travel and insurance advertising.

APPENDIX B

THE UNRELATED BUSINESS INCOME TAX AS A MODEL FOR NEW ELIGIBILITY CRITERIA

I. General Introduction

Analysis and adjustment of the differing ways in which the national government treats nonprofit and for-profit entities is not a new phenomenon. As Henry B. Hansmann points out,

> . . . Large classes of nonprofits receive special treatment in almost all areas in which federal legislation impinges upon them significantly, including corporate income taxation, Social Security, unemployment insurance, the minimum wage, securities regulation, bankruptcy, antitrust, unfair competition, copyright, and postal rates.

Hansmann, "The Role of Nonprofit Enterprise," 89 Yale L.J. 835, 836-37 (1980) (fns. omitted). In reexamining the entitlement of various kinds of nonprofit bodies to use subsidized postal rates for equally various purposes, it is worthwhile to examine the problems (actual or perceived), the solutions (provisional or permanent), and the critical literature associated with some of these areas of law and policy.

Even if we go no further back than the Postal Reorganization Act of 1970, we find controversy over the existence of subsidized rates. The Senate bill (S. 3842) would have done away with the historically preferred categories. The Senate's reasons, however, indicated more concern with the institutional structure of the reorganized postal system than with relationships between the nonprofit and for-profit sectors:

> . . . if postal rates and postal classification are going to be established on a basis of charging whatever the traffic will bear to a particular class of mail according to its ability to pay, or what kind of an increase it got last time, or its 'social acceptability,' then Congress is clearly better qualified to make such judgments than the Postal Service or any expert commission. Such purely political judgments are the province of Congress. But if rates and classifications are to be established on the basis of expert consideration of the overall value of the service provided and the allocation

> of costs on a scientific or quasi-scientific basis, then Congress should be removed entirely from the ratemaking and classification business. . . .

* * * *

> The theoretical basis of the committee recommendation on mail classification is that except for military mail, voting rights mail, and a very limited amount of free mail, there should be no preferential rates set by Congress. . . .

S. Rep. No. 91-912 (June 3, 1970), at 11. Still, the Senate report does reflect one present-day concern: the size of the revenue-forgone appropriation. Retaining Congressional authority to establish preferred categories, the report predicts, would bring it about that

> . . . every time the Postal Service raises rates by administrative action, organized mail users will use every available inducement to persuade the Congress to include them within the preferential group. Thus, a subsidy, which today, in the view of the Postmaster General, amounts to $300 million a year (representing the revenue foregone on preferential mail compared to regular rate mail) would grow to a staggering amount in a relatively short period of time.

Ibid.

The Senate view did not prevail. The House had preserved the preferred-rate classes (H.R. Rep. No. 91-1104, May 19, 1970, at 18), and they survived in the final legislation. But neither House seems to have examined, or considered restricting, the uses made by eligible mailers of the preferred categories.

Even in their origins, the nonprofit categories were not scrutinized with an eye to differential treatment based on use of the mail. Dr. Kielbowicz's paper (Appendix A to the Postal Rate Commission Report) examines these origins in detail; to the extent the establishment of preferred categories was explained at all it is the type of mailer, rather than its potential uses of the mail, that we find emphasized.

Today there is demand for a more analytical treatment of these nonprofit categories. It is reflected in the remarks of Senator Stevens on a provision of the 1985 Senate budget reconciliation bill (S. 1730, 99th Cong.) which, in altered form, became the charter of the present study:

> Mr. STEVENS. The 50-percent cap on the authorization would apply only to a distinct type of commercially oriented mailings which are now made with a taxpayer subsidy at the regular third-class nonprofit rates. With the limitation of this cap, the committee seeks to curb unwarranted use of the nonprofit postage rates caused by for-profit entities who further their commercial interests by means of nonprofit postage rates.
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> * * * *
>
> We do not intend that a nonprofit group would necessarily be subject to paying higher postage if items of value are included in its mailing. But, if such a group were to conduct a mailing which advertises or sells products that a commercial enterprise is making available through that group, we would consider such a mailing to benefit a for-profit commercial enterprise, at least in part. The committee merely chose to apply [a] 50 percent cap on unwarranted commercialized uses of nonprofit postage.

135 Cong. Rec. S15466 (November 14, 1985). Statements such as this demonstrate that, alongside the purely budgetary concern (mentioned in 1970 and more pressing today than at any time in recent history), we now face demands for a reexamination of the reasons we subsidize nonprofit mail, and at least implicit criticisms of some ways in which the nonprofit sector has used its postal privileges.

One possible reaction to this new demand for reconsideration of a long-established scheme is that it represents only a temporary phase of budget-cutting fervor and free-market ideology. The fact is that similar concerns about the role and proper extent of governmental favor toward nonprofit entities have long since surfaced, and been analyzed and acted upon, in other areas. In particular, it has sometimes been found less than satisfactory to extend government favors or exemptions to nonprofit bodies solely because they are nonprofit. The whole range of their different activities has been reviewed, and the particular privilege involved has been extended to some activities and withdrawn from others.

This paper concentrates on one important mechanism for drawing these distinctions: the Unrelated Business Income Tax ("UBIT"). Added to the Internal Revenue Code by the Revenue Act of 1950, and amended in 1969, it has also been elaborated through IRS rules and court decisions. It had its origin in legislative concerns quite similar to those prompting the present investigation of nonprofit mail eligibility. A prominent (though not the only) precipitating cause of the legislation was the acquisition by a university of a large food-processing company -- whose income, under the law as it then stood, became forthwith exempt from Federal income taxation. As we indicate below, the advantage such exemptions were thought to give to otherwise normal businesses in competing with their for-profit congeners provided the most important incentive for enactment of the UBIT. And arguments are not lacking today that the "commercial" use of nonprofit postal rates provides a similar advantage.

After a brief review of some additional nonprofit/for-profit distinctions in regulatory and other governmental fields, we will sketch the history of the UBIT (including the concerns which led to its enactment). We will outline the multipart test used today to determine the taxability of a category of nonprofit income and consider its adaptability to preferred mail rate eligibility. This will involve considering the similarity, if any, between the tax problems faced in 1950 and the postal rate situation before us in 1986, as well as any special influence that specifically postal traditions may, or should, have on the choice of solutions.

II. A Variety of Federal For-Profit/Nonprofit Distinctions

A number of federal statutory programs treat nonprofit and for-profit entities differently. Hansmann, supra, 89 Yale L. J. at 836-837, lists 10 such areas. A few of them, interesting for our purposes because they also distinguish among the various types of activities that nonprofits may carry on, are discussed here.

Social Security. Section 419(a)(8)(B) of title 42, U.S. Code, excludes from "employment" for Social Security purposes work done in the employ of "a church or qualified church-controlled organization" that has opted out of the system for doctrinal reasons.[1] However, the exclusion is not extended to "service in an unrelated trade or business (within the meaning of § 513(a) of [the Internal Revenue Code])." A worker in a church-controlled business not qualifying for exemption of its income, because it is unrelated to the church's religious mission, is also mandatorily covered by Social Security.

Fair Labor Standards Act. A similar distinction here can best be observed in the Department of Labor regulations (29 CFR 779.214). This rule cites, as generally applicable law, Mitchell v. Pilgrims Holiness Church Corp., 210 F.2d 879, 880-881 (7th Cir. 1954), where FLSA standards were applied to workers in a church-owned printing shop. The court explained that while religion is not commerce, a religious body may nonetheless engage in commerce -- e.g., by establishing a printing business. Congress has since blurred the distinction by extending enterprise coverage to some schools, hospitals, and other institutions -- so that their employees are covered even if engaged in directly charitable or educational tasks. 29 U.S.C. § 203(r). The Pilgrims case is still the general rule, however. The FLSA is particularly interesting because, from the outset, it has denounced substandard wage conditions as "an unfair method of competition in [interstate] commerce." 29 U.S.C. § 202(3); and see Maryland v. Wirtz, 392 U.S. 183, 189-190 (1968). The parallel between this policy and the complaints which led to the UBIT (and are heard today regarding some uses of preferred mail rates) is evident.

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[1] This is permitted by 26 U.S.C. § 3121(w). The election is available to church-controlled organizations exempt under § 501(c)(3), unless they offer "goods, services, or facilities for sale, other than on an incidental basis, to the general public" (unless they do so at nominal, below-cost prices) and get more than 25 percent of their income from government sources or sales of goods or services "in activities which are not unrelated trades or businesses," or both.

Price discrimination. The Robinson-Patman Act (15 U.S.C. § 13c) exempts "purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." These entities may accept a price lower than that offered others, for like goods in the same market, without violating the Act. The courts have wrestled more than once with the interpretation of "for their own use." Logan Lanes, Inc. v. Brunswick Corp., 378 F.2d 212 (9th Cir. 1967), cert. denied, 389 U.S. 898 (1967), and Students Book Co. v. Washington Law Book Co., 232 F.2d 49 (D.C. Cir. 1955), cert. denied, 350 U.S. 988 (1956), are two useful earlier cases. The matter was revisited in Abbott Laboratories v. Portland Retail Druggists Assoc., 425 U.S. 1 (1976) -- a case notable for its recognition that the use made of the purchased articles is determinative, and that the range of exempt uses may change in parallel with historical changes in the public-service role of the nonprofit entity. A line between (exempt) use in the central charitable mission and (nonexempt) acquisition for resale appears in the decisions.

While other examples might be found, this discussion should indicate that there is nothing historically or logically anomalous about distinguishing among the uses a nonprofit body makes of a public benefit or exemption -- and perhaps limiting them. With that assurance, we turn next to the most striking and highly articulated instance of such a distinction -- the unrelated business income tax -- and its possible application to the postal problem.

III. Overview -- History and Purpose of the UBIT

The unrelated business income tax (UBIT), stemmed from an IRS study which has been cited as the first attempt, after a number of years of operating experience, to probe the "conceptual distinction" between "related" and "unrelated" business activities. Weithorn and Liles, "Unrelated Business Income Tax: Changes Affecting Journal Advertising Revenues," 45 Taxes 791, 792 (Dec., 1967). As such, the legislative history of the tax would seem a primary source for an understanding of its appropriate application in the tax world and the degree to which it can be applied, by analogy, to postal affairs. Yet it has been argued -- at least with respect to the 1969 amendments -- that the lengthy history of the tax may obscure rather than elucidate the Congressional purpose:

> In assessing the history of the 1969 legislation, several points must be noted at the outset. One is that the bill was complex and long (H.R. 13270 was 368 pages), the amendment to section 513(c) was a relatively minor issue,[25] and the subjects covered by the bill were addressed in wide-ranging House and Senate hearings (totalling more than 12,000 pages) and lengthy committee reports (totalling more than 1000 pages). Not surprisingly in such a situation, different and at times contradictory items can be found buried in the massive legislative history, and courts must be particularly cautious in attributing to Congress an intent not firmly rooted in the statutory language.[1]
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> [25] The amendment of section 513(c) was not among the Ways and Means Committee's summary of the 'principal provisions' of the bill concerning tax-exempt organizations. House Comm. on Ways &

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[1] Brief for Respondent on Writ of Certiorari at 21, American College of Physicians v. U.S., 743 F.2d 1570 (Fed. Cir. 1984), *rev'g* 3 Cl. Ct. 531 (1983), *cert. granted* (S. Ct. No. 84-1737) (November 14, 1985), 54 USLW 4387 (1986). *See also* Ahern, Comments - "Taxation: Unrelated Business Income Tax (Sections 511-513) And The 1967 Regulations," 33 Mo. L. Rev. 230, 231 (1968), where the author discusses the various reasons for the UBIT which are cited in the legislative history.

Means, 91st Cong., 1st Sess., Revised Summary List and Brief Description of Provisions Contained in H.R. 13270. 1 (Comm. print 1969).

And while the broad purposes of the original (1950) legislation were clearly enough expressed, they were phrased very generally, and -- in the view of some analysts -- did not rest on much empirical study of the unrelated business problem. From a review of the works of a number of commentators on the topic, a consensus emerges on a few major principles of Congressional intent. We will review the development of those principles.

One principle that predates the emergence of the UBIT and permeates various aspects of the law, is the Congressional desire to give favored status to nonprofit organizations. As stated by former Secretary of the Treasury Snyder, during the hearings on the 1950 tax legislation:[2] "These [tax] exemptions [for charitable and educational organizations] reflect a long-standing Federal Government policy to encourage the activities of such organizations." One writer speculated that the lack of legislative explanations for these exemptions may have reflected a belief that: "the wisdom of tax exemption was self-evident, that the basic policy was politically invulnerable to change, or that taxation in this area would bring in little revenue" -- attitudes which have since changed. Bittker and Rahdert, "The Exemption of Nonprofit Organizations from Federal Income Taxation," 85 Yale L.J. 299, 301 (1976). While the policy is no longer politically invulnerable, various compromises concerning the tax status of these organizations indicate that they remain politically sensitive to the extent that the desire to accord them favored status persists.

For instance, one of the prime motivations for the UBIT was the desire to address claims of unfair competition between nonprofit organizations and their commercial counterparts. Yet, as a number of treatises point out, the UBIT does not eliminate unfair competition in terms of either (1) the empirical evidence of competition in a particular market, or (2) the particular income-producing items of nonprofit organizations targeted for taxation. See Bittker and Rahdert, *supra*, 85 Yale L.J. at 320. Furthermore, the broader argument that it is "unfair" to allow "loopholes" in a "normal" tax structure for nonprofit organizations, has been challenged by one writer who cites the legislative perception that these organizations are, *ab initio*, inappropriate objects for an income tax. *Id.* at 304.

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[2] Weithorn and Liles, supra, 45 Taxes at 794, citing Hearings on Revenue Revision of 1950 before Committee on Ways and Means, 81st Cong., 2d Sess. 18, 19 (1950).

Before weighing the various arguments pro and con, it is necessary to review the purposes and concrete terms of the UBIT as they have evolved over the years, and as they presently stand.

IV. The Purposes of the UBIT: Analysis and Critique

Before discussing the development of the UBIT, its present scope and interpretation, and its lessons for the postal rate problem, we must analyze the reasons for its original creation. These purposes can be rather briefly summarized, but are subject to some criticism from the logical and economic point of view. It is not too much to say that, despite the essentially economic rationale for the UBIT, it emerges from critical analysis as a workmanlike -- and essentially political -- accommodation of conflicting public policies rather than as the inescapable outcome of a line of economic reasoning.

A. The Fairness Rationale

One of the two basic reasons given for the creation of the UBIT was the prevention of competitive unfairness. The victims of the perceived unfairness were taxpaying entities carrying on the same trade or business as the untaxed charity. Besides its supposed direct competitive advantage, the nonprofit enterprise was also viewed as presenting a danger to the tax base; by driving out taxpaying rivals and taking over their trade, it would tend to convert taxable into nontaxable income. Thus there was a relation between the "fair competition" rationale and the other main reason given for proposing the UBIT: protection of the federal income tax base. Liles and Blum, "Development of the Federal Tax Treatment of Charities," 39 Law & Contemporary Problems 6, 44-45 (1975); _and_ _see_ pp. 20-24, _infra_.

There is some evidence that competitive fairness was the more important rationale. While President Truman's tax message to Congress cited both, the House Report stressed the competition problem:

> The problem at which the tax on unrelated business income is directed here is _primarily that of unfair competition_. The tax-free status of these Section 101 [now section 501(c)] organizations enables them to use their profits tax-free to expand operations, while their competitiors can expand only with the profits remaining after taxes.

81st Cong., 2d Sess., H.R. Rep. No. 2319 (1950), at 36-37 (emphasis added). At all events, competition has taken on a good deal of significance in the subsequent interpretation and administration of the UBIT. The current Treasury Regulations, for instance, not only give it primary importance but also make it one of the tests for existence of a "trade or business":

> (b) Trade or business. The primary objective of adoption of the unrelated business income tax was to eliminate a source of unfair competition by placing the unrelated business activities of certain exempt organizations upon the same tax basis as the nonexempt business endeavors with which they compete. On the other hand, where any activity does not possess the characteristics of a trade or business . . . such as when an organization sends out low cost articles incidental to the solicitation of charitable contributions, the unrelated business income tax does not apply since the organization is not in competition with taxable organizations. . . .

Treas. Reg. sec. 1.513-1(b). The courts have taken the same view. For instance, in Disabled American Veterans v. United States, 650 F.2d 1178, 1187 (1981), the Court of Claims reasoned that:

> . . . in view of the legislative history which clearly indicates that, to constitute a trade or business for UBTI purposes, the activity must be conducted in a competitive fashion, if the contribution was set at an amount greatly in excess of the retail value of the premium item concerned, a competitive situation would not be present. . . .
>
> It is concluded that what is necessary to constitute a trade or business for UBTI purposes is that an activity be operated in a competitive, commercial manner. . . .

See also American Bar Endowment v. United States, 4 Cl. Ct. 404, 410-411 (Cl. Ct. 1984), affirmed in part and reversed in part, 761 F.2d 1573 (Fed. Cir. 1985), certiorari granted, S. Ct. No. 85-599 (1985).

It has some analytical significance that the problem was perceived as unfair competition rather than simply as the unfairness of different treatment of similar businesses.

Congress set out to remedy what it thought was an improper marketplace advantage enjoyed by nonprofit enterprises, not just a lack of symmetry in the incidence of taxation. This implies that some economic analysis of for-profit vs. nonprofit competition is appropriate. Some analysts have sought to provide it; and in general their conclusions have been rather unfavorable to the UBIT in its present form. One rationale for the tax has been attacked as a response to an imaginary problem. On another rationale, the UBIT has been criticized as underinclusive. Another analyst, who does not fully accept these criticisms, faults the tax for compelling nonprofits to concentrate in a few industries -- with worse results for competition than if they were subject to no tax on business income. All these criticisms are reviewed below.

Pricing questions. The most obvious line of attack on the untaxed, nonprofit-owned business is that it can set its prices below the level its taxed competitors can charge and thus attract away their customers. This argument, however, can be challenged on at least two grounds. First, it is not clear that exemption from a tax on profits will affect pricing. One commentator argues:

> The feared pricing advantage . . . may not exist. Some commentators contend that
>
> > [U]nder competitive conditions all firms in an industry produce until the cost of another unit of output equals the additional revenue it will bring. Because an income tax is levied only on profits, it will not be relevant in determining when that equalization point is reached. Consequently, except when economic 'costs' are not deductible as business 'expenses' . . . an income tax will not affect the price charged or the volume of production.
>
> On the other hand, some economists find that economic theory is inconclusive on this point, because the impact of a firm's tax exemption necessarily depends upon whether income taxes are generally borne by the taxpaying entity (or its owners) or are shifted to consumers via the price mechanism. This problem of 'tax incidence' is one

> of long standing, and the empirical studies have failed to resolve it thus far. Consequently, it is not clear that prices charged by a tax-exempt organization would necessarily be lower than those charged by its taxable competitors.

Kaplan, "Intercollegiate Athletics and the Unrelated Business Income Tax," 80 Colum. L. Rev. 1430, 1465-66 (1980) (footnotes omitted). *See also* Bittker and Rahdert, *supra*, 85 Yale L.J. at 319-320 (noting that no reason is apparent why a price that maximized pre- and after-tax profits before a change to nonprofit ownership would not still do so afterwards).

As Kaplan admits, this argument against the UBIT assumes that a profits tax cannot be passed on to consumers. If it can, then taxed competitors *may* have either to forego doing so (reducing their profits) or to fail to meet the nonprofit's price. It is not obvious that this disagreeable choice *must* be faced: the nonprofit may choose to maximize its returns by pricing up to its competitors' levels (which *ex hypothesi* reflect an income tax component not present in the nonprofit enterprise). It is even arguable that if the nonprofit's purpose is to maximize current income available for its charitable purposes, this latter course is more likely than price cutting aimed at expanding market share. If the pricing question is looked at a little more broadly, other issues emerge which, if not so closely resembling "unfair" price competition in the antitrust lawyer's sense, still present fairness problems. Rose-Ackerman points out that

> nonprofits can affect market prices without resorting to overtly predatory behavior. Even in a competitive market where firms are too small to affect market prices individually, the entry of nonprofits could lower prices by shifting the overall industry supply curve. Nonprofits may be willing to enter an industry even when marginal for-profit firms are just breaking even. If for-profits cannot easily exit, supply will be larger, returns will be smaller, and price will be lower than in an industry without nonprofit firms. And in an oligopolistic industry, where individual firms *can* affect price levels, equilibrium prices

> might be lower when one of the major competitors is tax-exempt even though no one ever sets prices below cost.

Rose-Ackerman, "Unfair Competition and Corporate Income Taxation," 34 Stan. L. Rev. 1017, 1023 (1982) (footnote omitted). These structural problems are perhaps much more abstract than the "unfairness" Congress thought it was addressing in the Revenue Act of 1950, but they do point to the need for caution in discounting any relation between nonprofit, nontaxable status and pricing. In addition, they indicate the potentially crippling (from the administrative standpoint) extent to which the pursuit of "fairness" can depend on detailed and complex fact patterns in various markets or industries. This point (in spite of the differences between the tax situation and the present postal rate question) will continue to be relevant to our investigation.

It seems clear that, depending on the empirical incidence of the income tax (which as noted may vary with industry conditions and particularly the state of competition), the tax may or may not come to resemble an economic cost. One distinction between the tax issue and the postal issue is that postage is an input cost and hence does not share the obscure status of a tax on profits. This will be discussed further (pp. 74-75, below) when we evaluate the usefulness of the UBIT analogy for postal pricing policy.

The second form which criticism of the "unfair price competition" rationale has taken is a denial that untaxed nonprofit-owned enterprises will in fact engage in price-cutting. Bittker and Rahdert (supra, 85 Yale L.J. at 320) argue that the business practices of charity-owned firms might be expected to be cautious rather than risk-oriented. This, if true, could suggest the unlikelihood of expansionary price-cutting, on their part. Perhaps more compelling is the argument, mentioned above, that

> Even if the tax-exempt organization could reduce its selling prices, it is an unlikely candidate to initiate a price war. These organizations typically acquire business operations

> to supplement their current income and probably would not want a price war during which their current income would drop. And if they attempted to recover this short-term loss by raising prices after the competition was eliminated, those higher prices might induce new entrants into the field. Thus, these organizations would be unlikely price-cutters. . . .

Kaplan, supra, 80 Colum. L. Rev. at 1466 (footnotes omitted). This criticism of the UBIT rationale is not affected by the peculiar economic status of a profits tax; it simply proposes an (empirical) conclusion about the behavior of charitable, educational, or other nonprofit organizations that control business firms. There is no a priori reason to think that current income maximization would be pursued less singlemindedly if the opportunity to expand by price cutting came about through reduced factor costs rather than exemption from taxes. (This formulation assumes that income taxes are being passed on to consumers, so that they can be treated as a factor in pricing decisions.) Hence the argument is of interest in our postal investigation as well as in debates over tax policy. An empirical investigation might well show that managements of nonprofit and nonprofit-owned enterprises vary widely in their assessments of the relative desirability of current income vs. successful competitive expansion. (One factor that might be significant is the degree of independence enjoyed by those operating the business enterprise. If Bittker and Rahdert's speculation that nonprofit executives tend to be cautious is correct, then the price-cutting potential of a particular nonprofit-owned enterprise might well vary with the independence its managers enjoyed vis-a-vis the governing body of the charity or college.)

In summary, the idea that, if untaxed, nonprofit-owned businesses will undercut their taxpaying competitors has been sharply criticized. Some of this criticism depends for its validity on one's beliefs about the true incidence of the income tax (which may in turn depend on what one knows about the structure of the particular industry in question). On the other hand, some of it depends on one's views about the preferences of nonprofit managements, especially as to the rival claims of current spendable income and expansion of market share. Here the element of doubt is due not to the problematical status of the income tax but to the lack of adequate empirical information about the preferences of the relevant managers.

Capital accumulation and expansion. The second main argument against the untaxed nonprofit enterprise postulates an advantage in expansion through retained earnings. A for-profit enterprise is taxed on net income, and so has less to reinvest following payment of expenses and debt interest. Hence the nonprofit enterprise is at an advantage, created solely by the tax law, in expanding or modernizing.

This argument does not suffer from the theoretical difficulties surrounding the pricing argument. It is true by definition that exemption from a tax on net income leaves more funds for the owners, if they so choose, to reinvest. This is true whether or not firms in the industry are able to shift the incidence of the tax to consumers. How far the for-profit firm is actually disadvantaged does depend on its relative ease of access to outside capital. The greater the efficiency of capital markets, the less the advantage of retained earnings. Rose-Ackerman, supra, 45 Stan. L. Rev. at 1023-1024. If lenders had as complete a body of information about a firm's intended use of funds as the firm itself did, there might be no cost difference between internal and external capital. Since this is seldom if ever true, it is reasonable to look for some (widely varying) advantage in the possession of extra retained earnings.

The capital accumulation basis for the UBIT has been criticized as demonstrating that the tax in its present form is underinclusive. In particular, it is pointed out that --

> 1. Profits from a related business are as freely available as those from an unrelated business, yet only the latter are taxed in the hands of a nonprofit owner; and

> 2. Passive income (stock dividends, bond interest, etc.) can also be accumulated and reinvested more rapidly if untaxed, yet the UBIT reaches only (active) income from a trade or business.

Thus the UBIT does far less than it might to equalize the access of nonprofit and for-profit enterprises to retained earnings for expansion. Kaplan, supra, 80 Colum. L. Rev. at 1466, takes this as showing that the UBIT

> . . . lacks a consistent economic underpinning. Rather it is a political compromise that keeps certain customary sources of income -- interest, dividends, rents, and the like -- tax-free and eliminates the perceived tax advantages of actively conducting "unrelated" commercial operations.

This is probably true; maximization of nonprofit vs. for-profit "fairness" and maximization of nonprofits' ability to finance their activities, taken as absolutes, seem to be incompatible. However, it should be recalled that Kaplan's argument assumes the ability to transfer funds from untaxed to taxed sectors of a nonprofit's activities. If we assumed a rigid compartmentalization of these activities, then the tax-free status of a nonprofit's bond interest income would be of no concern to the for-profit competitor. Though untaxed, these funds would be unavailable to the nonprofit-owned competitive business. Thus it is a question of fact, with respect to particular enterprises, whether the UBIT improperly lets funds that can in practice be shifted to (i.e., treated like retained earnings of) the unrelated business escape taxation.

It is also worth recalling what was said about the propensity of nonprofit managements to engage in expansionary price cutting. If there is a strong preference for current spendable income, it will affect reinvestment decisions as well as pricing decisions (though perhaps to a lesser degree, since modernization can or must take place even without a desire to expand market share at the expense of competitors).

Validity of the fairness argument under different market assumptions. In examining both the pricing and capital accumulation aspects of the fairness rationale, we have found that its validity often may depend on factual circumstances. Empirical questions include the ability of firms in an industry to shift the incidence of the income tax, the income-vs.-expansion preferences of nonprofit managers, the cost differential between internal and external funds for expansion or improvement, and so on. There are other sets of factual premises which can affect the validity of the economic justification for the UBIT; some of these are discussed by Rose-Ackerman.

One set of circumstances given great prominence by Rose-Ackerman is whether nonprofit competition is anticipated or not. She reasons that

> . . . whenever for-profits could reasonably have expected nonprofit competition at the time of their initial commitment to the industry, they would have included that fact in their calculations of expected returns and made their decision to invest accordingly. They would not have invested unless they expected to do at least as well there as in alternative investments. Therefore, in the case of anticipated competition, no claims of unfairness can be substantiated even if exit is difficult. This argument is independent of any particular model of nonprofit behavior. So long as the entry and subsequent behavior of nonprofits were anticipated, taxable firms could have no grounds for complaint.

Rose-Ackerman, supra, 45 Stan. L. Rev. at 1025-1026.

This argument perhaps has more than an abstract theoretical interest, in spite of Rose-Ackerman's concession that these knowledge conditions are "stringent" and not likely to be found in the real world. Arguably, entry by nonprofits can sometimes be anticipated with reasonable likelihood of correctness, particularly where the business the nonprofit enters is perceptibly related to its charitable, educational, or scientific activities. "Common sense" would show, for instance, that a university is relatively likely to enter such businesses as computer timesharing, operating a laundry, or serving meals. It is relatively unlikely to establish or acquire an airline, a steel mill, or (to use the classic example) a macaroni factory. In other words, entry into a related trade or business is more plausibly foreseeable than entry into an unrelated trade or business. Thus the current tax law standard is (perhaps fortuitously) supported by an economic argument. If entry into related businesses is comparatively foreseeable, and no unfairness exists where nonprofit entry can be reasonably predicted, then any fairness-based reasons for taxing nonprofits' income from related businesses are seriously weakened.

In a competitive market, and absent predation by the nonprofit, unanticipated nonprofit entry can injure for-profit firms through what Rose-Ackerman calls "excessive entry." Rose-Ackerman, supra, 45 Stan. L. Rev. at 1026 ff. This occurs when nonprofits have investable cash and can obtain higher returns by active entrepreneurship than by investing in bonds. In this case,

> . . . Nonprofits will continue to enter until their presence drives down industry returns to the point where marginal nonprofits are indifferent between passive and active investments. When that happens, marginal for-profits will want to leave the industry because they will be earning 'subcompetitive' returns that are less than the market return on riskless assets. Because of the costs of exit, those firms will earn less than market returns whether they stay in business, go bankrupt, or sell out.

Rose-Ackerman, supra, 45 Stan. L. Rev. at 1028 (footnotes omitted). If nonprofit entrepreneurship is evenly diffused throughout the (assumedly competitive) economy, it is unlikely to have much effect on returns; if it is concentrated in a few lines of business, it may. Rose-Ackerman finds this concentration to be a consequence of the UBIT requirement that a business be "related," and hence argues that "[s]uch concentration . . . makes it much more likely that the business activities of nonprofits will impose losses on competitive for-profit firms." As a result, the tax probably "creates more unfairness than it can possibly prevent." Id. at 1038. This argument has merit, but needs to be qualified, as suggested above, by the realization that unanticipated entry by nonprofits -- the only kind here relevant -- is less of a problem when the trade or business concerned is visibly related to the nonprofit's primary exempt purpose. The real difficulty may lie in the fact that "relatedness" is a legal standard, subject to reinterpretation by the IRS and the courts, so that at times a business may be found "related" even when there is no very obvious connection with the nonprofit's basic mission. Ibid.

In the case of oligopolistic markets, it is true by definition that one firm can affect another's returns. Rose-Ackerman describes in considerable technical detail how this could occur, but for present purposes the most important point is that

> The claims of unfair competition raised by oligopolists should not be taken seriously. American antitrust and regulatory policy makes it clear that there is no public commitment to the maintenance of profits resulting from economic concentration. . . . [F]irms should not be entitled to special protection when the production decisions of nonprofits lower their oligopoly returns.

Rose-Ackerman, supra, 34 Stan. L. Rev. at 1036.

Enough has been said here to indicate that the fairness argument, though subject to some criticism, is substantial enough to have required some action by Congress in 1950. (Whether the particular remedy adopted was logically ideal is another question.) The fairness arguments raised in connection with the UBIT are clearly akin to those being made today in connection with the preferred postal rates, and -- as will appear below (see pp. 74-75 and 90) -- may even be more cogent in that context than in connection with the income tax.

B. The "Revenue Base" Argument for the UBIT

The two major considerations often cited as the reasons for the creation of the UBIT are: (1) the desire to eliminate unfair competition, and (2) the desire to avert a drain on federal tax revenues. While the former, discussed in the preceding pages, may have been the "principal concern of Congress," (see Kaplan, supra, 80 Colum. L. Rev. at 1464) the revenue-base argument also merits some discussion in considering the full import of the UBIT and its possible application in the postal sphere. As will become clear in the ensuing discussion, the revenue-base rationale consists of two basic theories: (1) a "pure" revenue argument that the UBIT is necessary to prevent the loss of additional revenue sources due to the tax-exempt status of an organization, and (2) "fairness" considerations based on the incidence of taxation.

A question which immediately comes to light, upon reviewing a number of works on the UBIT, is: why is there little attention paid to the revenue-base motivation for the tax? That is, one would expect an explication of the reasons behind a major shift in the tax laws -- particularly when it involves a politically sensitive topic like exempt organizations. Yet detailed analysis is lacking with respect to the revenue-base argument. One possible reason which is suggested from a review of the dual rationale for the revenue-base argument, is the lack of a solid empirical basis for the suspected revenue drain. Consequently, as was ultimately the case with the competition theory, the desire for a political compromise, in terms of a "fair tax policy," emerges as a fairly patent "third rationale" for the revenue-drain argument. We now turn to a review of the specifics of the revenue-base theory.

Analysis of the dual rationale for the revenue-base theory. Weithorn and Liles stated the reasoning behind the revenue-base argument as follows:

> [O]fficial concern that continued acquisition of taxpaying businesses by tax-exempt organizations would dry up existing sources of tax revenue, thus increasing the tax burdens on the remaining taxpayers . . . .
>
> . . . .
>
> 'The correction of present abuses, which shift additional burdens to the rest of the population, becomes essential for reasons of equity.'[1]

Kaplan phrased it in terms of the desire to "increase federal tax revenues." Kaplan, supra, 80 Colum. L. Rev. at 1464 (fn. omitted). He continued by stating: "This latter policy is effectuated whenever an income-producing activity becomes taxable ..." Id. Yet, the lack of revenues from nonprofit organizations is cited as a reason for granting exemptions, in the first place, and, at the same time, is cited as an outcome of the UBIT. For instance, Bittker and Rahdert state that one reason for the tax exempt status of nonprofit organizations may have been "their meager potential as sources of revenue." Bittker and Rahdert, supra, 85 Yale L. J. at 304. And Rose-Ackerman points out that "very little money" has been produced from the UBIT. (She says that nonprofits have, instead, channeled active investments into related fields). Rose-Ackerman, supra, 34 Stan. L. Rev. at 1017-18. Bittker and Rahdert also note that the danger from the acquisition of tax paying businesses by tax exempt organizations seems, in reflection, "overstated if not wholly erroneous." Bittker and Rahdert, supra, 85 Yale L. J. at 320.

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[1] Weithorn and Liles, supra, 45 Taxes at 793, and 794 quoting Hearings on Revenue Revision of 1950 before Committee on Ways and Means, 81st Cong., 2d Sess. 4, 5 (1950).

If Congress, at one point, correctly perceived that taxing previously exempt organizations would produce little new revenue, how could it also reasonably decide, in 1950, to tax them because of a desire to "plug a drain on the revenues ..."? Weithorn and Liles, supra, 45 Taxes at 794. The case which has been cited as the most immediate cause of the UBIT was the acquisition of the Mueller macaroni business by New York University. C.F. Mueller Co. v. Commissioner, 190 F.2d 120 (3d Cir. 1951), rev'g 14 T.C. 922 (1950). That case created a general fear of a revenue drain from "feeder corporations" obtaining tax-exempt status because of the "destination of income" test -- in which one looks to the application of an organization's income, and not its source. See Weithorn and Liles, supra, 45 Taxes at 792. See also page 27, infra. Thus, in 1950, Congress may have looked at the revenue-base argument as a public interest problem transcending the for-profit and non-profit controversy.

While the heightened Congressional concern might -- at first blush -- seem an appropriate response to this disturbing portent of a potential drain on revenues, Bittker and Rahdert point out, as noted above, that Congress's concern now seems exaggerated. These authors also argue that there may have been little reason to suspect that nonprofit organizations would behave as Congress feared. See Bittker and Rahdert, supra, 85 Yale L.J. at 320. A distinction between the behavior of nonprofit and profit-oriented organizations may also, perhaps, explain the Congressional perception justifying exemptions for nonprofit organizations in the first instance -- that they have, as noted earlier, "meager potential as sources of income." See p. 22, supra.

Conclusion. Assuming that the hypotheses supporting a revenue drain were simplistic (or at least not sufficiently explored), a possible rationale for positing the theory of a drain on federal taxes could be -- as with the competition issue -- the need to establish a modicum of "fairness," or a perception that fairness was being pursued, even on a limited basis. This idea would be in accord with the "political compromise" theory discussed under the competition section. As also suggested above, Congress may have found the revenue-base argument an appealing public interest rationale for a political compromise. This theory is alluded to in the quotation on p. 21, supra, which cited the need to correct abuses "for reasons of equity."

And since the revenue-base argument and competition argument can overlap, without coalescing into a cogent empirical rationale, the likelihood of a possible common foundation in terms of a political compromise rationale becomes greater. For instance, Kaplan (see also Liles and Blum, supra, 39 Law and Contemporary Problems, at 45) cited the fear that exempt organizations would lower their prices and drive competitors out of business -- thereby shrinking the federal tax base. Kaplan noted:

> Even if the tax-exempt organization could reduce its selling prices, it is an unlikely candidate to initiate a price war . . . . In any case, no studies of charity-owned businesses were undertaken when the unrelated business tax was first imposed, so there is no empirical evidence of the impact of these entities' tax exemption on their pricing decisions. (footnote omitted)

Kaplan, supra, 80 Colum. L. Rev. at 1466. The lack of empirical evidence in a number of areas makes the political compromise -- or public interest -- argument a compelling explanatory rationale for the UBIT, under both the revenue-drain theory and the competition argument.

1. How might the revenue-base theory apply to the Postal Service?

Even if this explanatory hypothesis of political compromise is adopted because the two stated rationales lack an empirical basis in the tax area, it remains to be seen if any of these rationales can be applied to postal affairs.

The "pure" quantitative revenue test is, perhaps, more clearly applicable here than it was to the income tax in 1950. The revenue forgone appropriations provide a good illustration of how this theory could work in the area of postal rates.

Revenue forgone is a known (or at least calculable) quantity which is always recovered through appropriations. It currently approximates $750 million. In order to reduce that figure, specific mail categories (nonprofit) can be isolated with a view toward adjusting their preferred status and their rates -- by specified amounts. Since any accompanying savings also would be "known quantities," (that is, the effect of rate changes can be estimated by the Commission) a reduction of the revenue forgone also could be expressed in specific dollar amounts.

Unlike the 1950 tax legislation, where revenue-saving was a quantitatively vague, if unequivocal, goal which Congress sought to achieve, in this instance the revenue to be saved can be expressed more concretely in terms of a plausible numerical solution, i.e., dollars saved and spent. Thus, the empirical basis for applying the UBIT revenue-saving theory is more firmly rooted, in the postal area, if only because an empirical foundation -- the revenue forgone appropriations -- is apparent from the outset.

We explore this and other possible applications of the UBIT in greater detail, infra. However, we first describe the evolution of the UBIT, in order to establish a coherent framework for our recommendations.

V. Critical History of the UBIT

A. Introduction

Attempts to exempt nonprofit organizations from taxation began as early as 1894, but did not succeed as significant legislation until after the passage of the Sixteenth Amendment, when the Revenue Act of 1913 included an exemption for certain nonprofit organizations. (Hereinafter, the term "nonprofit" organizations generally refers to institutions formed to benefit society, and other organizations not engaged in business for the benefit of their investors.)

As Liles and Blum state in their history of the tax law and charities, the desire to give preferential treatment to these organizations is deeply rooted in American tax history and has had a profound impact on American finance; but no less important are the efforts to avert abuses of this special treatment. Specifically, these authors state:

> One does not have to be an economist to appreciate what this tax encouragement has meant to the development of private philanthropy in this country. Our record of achievement in this regard is unique in the world and one of which all taxpayers can be justly proud. Moreover, when tax abuses inevitably appeared, attempts were made to deal with them carefully, in a limited way designed to eliminate the abuses without harming private charity. Here again, the record preceding the Tax Reform Act of 1969 was not a mean achievement.

Liles and Blum, supra, 39 Law and Contemporary Problems at 56. Just as the uniquely preferred status of nonprofit organizations is a long-standing and fairly undisturbed tradition, so too, this area of the law has been fraught with controversy -- in both the governmental and private sector -- over the concomitant concern for a fair and competitive economy. In the succeeding pages, we explore the history and controversy surrounding the UBIT, since it is the parameters of this law which highlight the potential application of the tax laws to the law on nonprofit postal rates, and which underscore the possible problems accompanying any revisions to the law on nonprofits.

B. Developments Culminating in the UBIT

The pivotal change in the nonprofit tax laws, as a number of authors point out, occurred in the Revenue Act of 1950 with the enactment of the unrelated business income tax (UBIT). As noted previously, Weithorn and Liles describe the study leading up to the 1950 Act as the "first effort . . . to analyze in depth the conceptual distinction between 'related' and 'unrelated' business activities." Weithorn and Liles, supra, 45 Taxes at 792. Bittker and Rahdert consider the Act to be a partial withdrawal of the complete statutory immunity from income taxation for nonprofits. Bittker and Rahdert, supra, 85 Yale L.J. at 316. Thus, the UBIT clearly was a major change in the tax laws, and one which addressed an area which may have been previously perceived as "politically invulnerable to change." Id. at 301.

The impetus for the Act is found in judicial decisions -- such as Trinidad v. Sagrada Orden De Predicadores, 263 U.S. 578 (1924) -- which had looked to the application of an organization's income, and not the source from which it was derived, to determine tax exemptions. This criterion became known as the "destination of income" test. See Weithorn and Liles, supra, 45 Taxes at 792. In another leading case -- Roche's Beach, Inc. v. Commissioner, 96 F.2d 776 (2d Cir. 1938) -- the court cited Trinidad and applied the destination of income test to uphold an exemption for a corporation which operated a bathing beach and rental business, and forwarded the profits to a charitable organization. The court's reasoning indicates that it applied the destination test and extended it a step:

> No reason is apparent to us why Congress should wish to deny exemption to a corporation organized and operated exclusively to feed a charitable purpose when it undoubtedly grants it if the corporation itself administers the charity.

Bittker and Rahdert, supra, 85 Yale L.J. at 318, quoting Roche's Beach, 96 F.2d 776, 779.

The major and most immediate reason for the creation of the UBIT was the fear of unfair competition under the destination of income test, as exemplified in the case of Mueller Co. v. Commissioner, 190 F.2d 120 (3d Cir. 1951), rev'g 14 T.C. 922

(1950). In that case, a tax-exempt corporation was established to borrow funds to purchase the Mueller pasta company and feed the profits to New York University Law School. The concern was that the "feeder corporation" would take advantage of the favored tax status now applied to the previously taxed profits of the Mueller Co., so that it would gain an unfair advantage in the pasta market. The Mueller Co. case was pending when Congress intervened with the UBIT.

As the courts were ruling on extensions of the destination of income test, the Treasury Department was unsuccessfully pursuing efforts to tax the unrelated business income of nonprofit organizations. Liles and Blum suggest (Liles and Blum, supra, 39 Law and Contemporary Problems at 44) that one reason the Treasury Department succeeded in 1950 may have been that it advocated a more reasonable approach than it had previously: the Department no longer contended that substantial business activities should disqualify an organization from exemption -- as it had in Trinidad -- but argued, in 1950, that the exemption should remain, and that the business income should be segregated and taxed. Thus, maintaining a generally favorable tax status for nonprofit organizations clearly was a Congressional concern in its treatment of nonprofits' business activities.

A number of reasons have been put forth for nonprofit exemptions from income tax: "a lack of fit between the concept of 'income' and the objectives of nonprofit organizations; their meager potential as sources of revenue . . . and the praiseworthy benevolent spirit animating such groups." Bittker and Rahdert, supra, 85 Yale L.J. at 304. At the same time, as we noted above, the lack of a definitive explanation "may have reflected a conviction that the wisdom of tax-exemption was self-evident. . . ." Id. at 301.

In contrast, the purposes of the UBIT are widely agreed upon: to eliminate unfair competition, and to avert a narrowing of the revenue base.[1] Of the two, competition was clearly the main concern.[2] Despite this concurrence on the law's purposes, the precise meaning and the proper application of the UBIT -- as created in 1950 and as it has evolved over the years -- have been widely debated and some of the controversial issues are being resolved by the Supreme Court.[3]

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[1] See Liles and Blum, supra, 39 Law and Contemporary Problems at 44, 46; Bittker and Radhert, supra, 85 Yale L.J. at 319-320; Weithorn and Liles, supra, 45 Taxes at 794; Kaplan, supra 80 Colum. L. Rev. at 1464.

C. The Terms of the UBIT

The thrust of the UBIT was to deny the tax exemption to "feeder corporations" (such as those cited in Mueller Co. and Roche's Beach), and to tax the unrelated business income of exempt organizations. (The relevant texts of the statutory provisions are found at 26 U.S.C. §§ 511, 512 and 513, and are included as Attachment A.) It has been argued that the tax on unrelated business income cannot be explained simply by reference to a pro-competitive rationale since "related" activities of exempt organizations may also compete with their commercial counterparts.

But Congress clearly did not intend to tax "related" trades or businesses. Weithorn and Liles, *supra*, 45 Taxes at 796. According to Weithorn and Liles, (*Id*. at 795) Congress did not want to interfere with customary and traditional activities of exempt organizations, even though these activities may contain commercial components. Bittker and Rahdert pose the question of whether income from dues -- which is considered traditional and therefore "related" -- really is equivalent to business income, since the organization has obtained the dues through advertising. Bittker and Rahdert, *supra*, 85 Yale L.J. at 308. Thus, "related" and "unrelated" activities are not necessarily easily distinguished.

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[2] Liles and Blum, *supra*, 39 Law and Contemporary Problems at 45, *quoting* H.R. Rep. No. 2319, 81st Cong., 2d Sess. 36-37 (1950). *See also* p. 10, *supra*.

[3] American Bar Endowment v. U.S., 761 F.2d 1573 (Fed. Cir. 1985), *aff'g in part, rev'g in part* 4 Cl. Ct. 404 (1984), cert. granted, S. Ct. No. 85-599 (1985). On April 22, 1986, the Supreme Court decided the case of U.S. v. American College of Physicians, 743 F.2d 1570 (Fed. Cir. 1984), *rev'g* 3 Cl. Ct. 531 (1983), *cert. granted*, 54 USLW 4387 (1986).

But this distinction is, perhaps, the most seriously debated aspect of the UBIT, as reflected in the three-part test for its application prescribed in the legislation and developed in the Treasury Department's Regulations. We turn next to the history of these Regulations. The 1969 amendments to the statute are discussed in their chronologically proper place in the history of the UBIT.

D. Treasury Regulations and the Test for UBIT

The Regulations adopted by the Treasury Department in the 1950s set out the terms for application of the UBIT: there must be a trade or business regularly carried on by the organization and the business must not be substantially related to the performance of the organization's exempt function. Treasury also supplied definitions for this three-part test and refined those definitions over the years. As will become clear in our discussion of the changes in the law on the UBIT, the comparisons between the definitions adopted by Treasury in the 1950s, and those adopted under the 1967 Regulations, generated significant controversy.

1. Regulations in the 1950s

The term "trade or business" initially was defined simply by reference to section 162 of the Code which, itself, contains no concrete definition. (Section 162 allows a deduction for expenses "in carrying on a trade or business." 26 C.F.R. § 1.162(a).) "Regularly carried on" meant those activities carried on "with sufficient consistency to indicate a continuing purpose . . . to derive some of its income from such activity." "Substantial relation" was defined in terms of whether the "principal purpose" of the business was to further the organization's exempt purposes. See Liles and Blum, supra, 39 Law and Contemporary Problems at 50.

Webster states that the Regulations accomplished the purposes of the UBIT without affecting the basic tax exempt status of nonprofit organizations. Webster, "Effect of Business Activities on Exempt Organizations," 43 Taxes 777, 778 (December, 1965). As we note above in our discussion of the purposes of the UBIT, there is not complete agreement that the issue of unfair competition has been resolved, in fact, by the UBIT. Similarly, the purpose of averting a revenue drain has been questioned -- in terms of its legitimacy as a concrete problem, as well as in terms of its resolution through the UBIT. Nonetheless, Webster's main point -- that tax exemptions are left undisturbed by the UBIT -- is important. As many of the cited authors make clear, the basic policy of preferred status for nonprofit organizations permeates the law and has subsisted despite other legislative changes.

2. The 1967 Regulations

The Regulations adopted in 1967 were described by Treasury as a "liberalization" of the rules. This characterization has been called into question by those who cite the increase in the types of "trades or businesses" included within the ambit of the UBIT under these "new" regulations -- particularly journal advertising.[4] Below, we discuss the new definitions and this controversy in detail.

a. Definitions

The definition of "*trade or business*" in the 1967 Regulations includes the following language:[5]

> Accordingly, for purposes of section 513 the term *'trade or business' has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or performance of services*. Thus, the term "trade or business" in section 513 is not limited to integrated aggregates of assets, activities and good will which comprise businesses for the purposes of certain other provisions of the Internal Revenue Code. *Activities of producing or distributing goods or performing services from which a particular amount of gross income is derived do not lose identity as trade or business merely because they are carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or*

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[4] *See, e.g.*, Liles and Blum, *supra*, 39 Law and Contemporary Problems at 53; Weithorn and Liles, *supra*, 45 Taxes at 804-805.

[5] Treasury Reg. Sec. 1.513-1(b) (26 CFR 1.513-1(b)) (emphasis added) (hereinafter cited as "Treas. Reg. sec. _____" or "Reg. Sec. ____").

> may not, be related to the exempt purposes of the organization.

Two aspects of this redefinition have been highlighted. Several authors point out that under this new Regulation, "fragmentation is possible." See Weithorn and Liles, supra, 45 Taxes at 798. That is, a separate enterprise or economic unit is not required, but rather "any activity" may be a "trade or business." Id. See also Liles and Blum, supra, 39 Law and Contemporary Problems at 51-52.

Liles and Blum also note that the implications of this new definition, for advertising, are clearly spelled out in the Regulations:

> The purpose and significance of this new definition for exempt journal advertising revenues is not left for the gentle reader's speculation. The Regulations categorically state:
>
> > Similarly, activities of soliciting, selling, and publishing commercial advertising do not lose identity as trade or business even though the advertising is published in an exempt organization periodical which contains editorial matter related to the exempt purposes of the organization.

Id. at 51-52 (footnote omitted).

It is readily apparent how journal advertising became a new category of "trade or business" under the 1967 Regulations. As Nonberg explains,[6] each "activity" of a larger operation now can be measured against the standards of "regularly carried on" and "not substantially related," and therefore each activity -- including journal advertising -- is potentially subject to the UBIT. Ahern explains the inclusion of advertising in the 1967 Regulations by interpreting the new definition of trade or business as "any activity carried on for the production of income," and concludes that since advertising is such an "income-producing" activity, it is a "trade or business" for purposes of the UBIT.[7]

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[6] Nonberg, "Taxation of Advertising in Exempt Organization Publications," TMM-76-12, Tax Management-Memorandum at 4-5 (June 7, 1976).

Nonberg also compares the theory behind this new treatment of exempt journal advertising with the objectives of commercial publications:

> Unlike the commercial situation, the editorial content and membership of an exempt organization publication are not conducted with a view to providing an advertising medium. Rather, the editorial component and the advertising component are separate undertakings, one directed toward the exempt purposes, and the other concerned with commercially exploiting these purposes.

Nonberg, supra, TMM-76-12 Tax Management Memorandum at 4.

A comparison between an activity (or "trade or business") of an exempt organization and its commercial counterpart is the hallmark of the Regulation's revised standard for "regularly carried on." As summarized, this new definition states:

> [I]t is necessary under the 1967 regulations to compare the frequency and continuity of an activity, as well as the manner in which it is conducted with similar business activities of a commercial venture.[8]

It has been pointed out that the emphasis on competition -- which was underscored in 1950 -- also is evident in this section of the 1967 Regulations. Liles and Blum, supra 39 Law and Contemporary Problems at 53.

The definition of "substantially related" also was changed in the 1967 Regulations:

> Trade or business is 'related' to exempt purposes, in the relevant sense, only where the conduct of the business activities has causal relationship to the achievement of exempt purposes . . . and it is 'substantially related' for purposes of section 513, only if the causal relationship is a substantial one. Thus, for the conduct of trade or business from which a particular amount of gross income is derived to be substantially related . . . the production or

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[7] Ahern, supra, 33 Mo. L. Rev. at 242. See also Kaplan, supra, 80 Colum. L. Rev. at 1438-39.

[8] Nonberg, supra, TMM-76-12 Tax Management Memorandum at 5. See also Liles and Blum, supra, 39 Law and Contemporary Problems at 53; Kaplan, supra, 80 Columb. L. Rev. at 1449; Reg. Sec. 1.513-1(c)(1).

> distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes.

Reg. Sec. 1.513-1(d)(2).

As with the new definition of a "trade or business," "substantially related" now applies to "activities," rather than an integrated trade or business. Also noteworthy is the explicit requirement of a causal connection between business activities and the exempt purpose. Additionally, the new regulations require consideration of the "size and extent" of the activities:

> Thus, where income is realized by an exempt organization from activities which are in part related to the performance of its exempt functions, but which are conducted on a larger scale than is reasonably necessary for performance of such functions, the gross income attributable to that portion of the activities in excess of the needs of exempt functions constitutes gross income from the conduct of unrelated trade or business.

Reg. Sec. 1.513-1(d)(3). Kaplan states that the courts have applied the 1967 definition of "substantially related" by looking at the financial results of an activity, while the Regulations look to the commercial aspects of an activity and do not exempt these commercial activities despite the presence of an exempt purpose in the same facility. Kaplan, supra, 80 Colum. L. Rev. at 1454-55.

This type of difference in the application of the UBIT is exemplary of the controversies which arose about the proper meaning of its terms. To some, those controversies were fueled, in part, by the 1969 amendment to the statute. We turn next to a discussion of this amendment.

E. The Tax Reform Act of 1969

As we noted at p. 30, supra, Treasury's definitions were challenged in terms of their proper application, particularly in comparison with the effect of the Regulations of the 1950s. Indeed, before the 1967 Regulations were validated by Congress in the Tax Reform Act of 1969, they had been invalidated by two courts -- the First Circuit, Massachusetts Medical Society v. U.S., 514 F.2d 153 (1975) and the Court of Claims, American College of Physicians v. U.S., 530 F.2d 930 (1976). (We discuss these cases in greater detail following our discussion of the legislation.) We describe the relevant portions of the 1969 Act before turning to a discussion of the points debated.

1. The Terms of the 1969 Amendment

Legislation regarding the UBIT -- and particularly advertising revenues -- was debated by Congress after the 1967 Regulations were published, and prior to 1969. For instance, as Liles and Blum point out, the Senate Finance Committee approved a one-year postponement of the Treasury Regulations' effective date, but the measure was rejected by the full Senate. Liles and Blum, supra, 39 Law and Contemporary Problems at 54. The provision which Congress enacted in 1969 is significant in terms of its title as well as its content. It provides as follows:

> (c) Advertising, etc., activities. -- For purposes of this section, the term 'trade or business' includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

26 U.S.C. § 513(c) (1969 Amendment). Thus, the Act redefines "trade or business" to make it conform to the 1967 Regulations, but does not affect the meaning of "unrelated." Furthermore, the amendment seems to be clear -- by virtue of its title -- that advertising revenues are to be considered under the UBIT. Liles and Blum, supra, 39 Law and Contemporary Problems at 55. This proposition seems supported by the text of the amendment which allows "fragmentation" of a trade or business into component "activities." Consequently, a nonprofit journal could be fragmented into a tax-exempt editorial activity, and an

advertising activity which is taxed under the UBIT. Yet it has been suggested that because the amendment is silent on the definition of "unrelated," the issue of whether advertising revenues are subject to the UBIT still is an open question. Id. We now turn to the debate about these types of issues.

F. The Controversy

The most seriously debated changes in the 1969 amendment and the 1967 Regulations are the use of the word "activities," and the references to advertising revenues.

As noted previously, "activities" is used in the new definitions of "trade or business" and "substantially related." It has been argued that the fragmentation of a "trade or business" into component activities is at odds with the history of the tax law, other portions of the tax law -- including other definitions of "trade or business" -- and with Congressional intent. Weithorn and Liles, supra, 45 Taxes at 798-800; Liles and Blum, supra, 39 Law and Contemporary Problems at 52.

Support for these arguments is found in the language in the Senate Finance Committee Report accompanying the 1950 Act, which states that "'trade or business' has the same meaning as it has elsewhere in the code." Id. at 799 quoting S. Rept. No. 2375, 81st Cong., 2d Sess., 106 (1950). It is pointed out that the statutory reference is to "any" trade or business, which implies one integrated enterprise, unlike the word "activities" which implies subdivisions of the unit. Beyond the language of the Report, the authors cite the types of entities described in the legislative history in support of their argument that Congress had in mind "a single economic unit, rather than . . . an 'activity'." Liles and Blum, supra, 39 Law and Contemporary Problems at 52. The real significance of this controversy lies in applying the word "activities" to the new "substantially related" test.

According to Kaplan, whether activities "contribute importantly" to an organization's exempt function requires a case-by-case analysis. He believes this new test for "relatedness" may be more in line with Congressional intent but still difficult to apply. He compares the standard of the 1950s'

Regulations with those of 1967 as follows:

> That an activity's principal purpose is to raise money no longer settles the question of substantial relatedness. Instead one must now ascertain the activity's contribution, if any, to education (or other exempt purpose) and then assess this contribution's 'importance' on some totally unexplained measuring scale. How this procedure is actually accomplished, however, has not been elucidated thus far by the few courts that have reviewed the application of these 'new' Regulations.

Kaplan, supra, 80 Colum. L. Rev. at 1452, citing Carle Foundation v. United States, 611 F.2d 1192 (7th Cir. 1979) cert. denied, 101 S. Ct. 85 (1980). The difficulties in interpreting the 1967 Regulations are evident from Kaplan's comparison, cited above, of Treasury's treatment of the new legal standard, which emphasizes the commercial aspects of an enterprise, with the treatment by the courts, which emphasize the financial results of an activity.[9] But despite these differences in emphasis, both standards relate to the business-like nature of an activity, which brings to mind the general emphasis on competition which prompted the UBIT. The importance of competition in the new Regulations has been challenged, however, by some writers.

For instance, Kaplan points out that the 1950 Code did not require that competition exist, in fact, and notes that the current Regulations require only a "sufficient likelihood of unfair competition." Id. at 1467. Weithorn and Liles conclude that the Regulations' emphasis on competition is "misplaced" and also point to the 1950 Code:

> In earlier portions of this paper it is indicated that in 1950 Congress did not enact a statute which prohibits exempt organizations from conducting business activities that compete with similar activities conducted by profit-making entities. If a business engaged in by an exempt organization has no competition whatsoever but is not substantially related to the exempt purposes of the organization, it will be subject to tax. On the other hand, if a business engaged in by an exempt organization is highly competitive but substantially related to the exempt purposes of

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[9] Id. at 1454-55.

> the organization (thereby meeting the 'principal purpose' test), it will not be subject to tax. Recognition of this distinction by the Treasury would facilitate revision [sic] the present Regulations along lines which accurately reflect the intent of Congress in 1950.

Weithorn and Liles, supra 45 Taxes at 807. Thus, the reliance on competition may be viewed as misguided, not only in terms of the real versus potential competition of the unrelated business activities subject to the UBIT, but also in terms of the inattention or lack of concern, by Congress, with respect to the competitive nature of related activities. (See also p. 16 supra; p. 29, supra and the discussion of Bittker and Rahdert therein.) This type of inconsistency leads Kaplan to conclude that the UBIT, "lacks a consistent economic underpinning . . . [and] is a political compromise . . ." Kaplan, supra, 80 Colum. L. Rev. at 1466.

Above, we addressed, in detail, these specific economic issues and their ramifications in terms of a "political" or public interest rationale for the UBIT. These issues also are instructive on the latitude remaining in the interpretation of the UBIT -- both in the legislation and in Treasury's Regulations. For instance, if a cogent rationale based on competitive concerns is not the sole basis for taxing unrelated business income, then it also becomes questionable whether the case-by-case analysis -- cited by Kaplan -- is necessary to invoke the UBIT. Specifically, some writers feared that Treasury's Regulations implied a per se rule that advertising revenues from nonprofit periodicals are subject to the tax.[10] Such a rule would seem to belie a concern for the commercial or competitive aspects of a specific trade or business, as well for their quality of "relatedness." Instead, a per se rule makes broad assumptions about these issues, for every instance in which they arise.[11]

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[10] See Middleditch and Webster, "The new unrelated business income Regs: what they mean; how to cope with them," 28 J. Tax 174, 175 (Mar. 1968); Weithorn and Liles, supra, 45 Taxes at 806; Webster, supra, 43 Taxes at 786.

Aside from the debate about competition, the concern about a per se rule in the new Regulations seemed to stem, in large part, from the combined effect of Treasury's use of the words "activities" and "advertising," with the new test for "substantially related," i.e., do the new rules -- by use of the word "activities" -- legitimately create a new category of trade or business in advertising, which can never be related or "contribute importantly" to the exempt function?

Above, we discussed several points made about the validity of the Regulations' use of the word "activities," in terms of the statute and the legislative history. Other arguments about the propriety of including advertising as a taxable activity take on a variety of forms. Liles and Blum make some general arguments that the 1967 Regulations may have been aimed at the $100 million in revenues from advertising in journals of exempt organizations. They also state that the new rules were, perhaps, a response to claims about the competitive nature of these journals' advertising. Liles and Blum, supra, 39 Law and Contemporary Problems at 50-51.

The more specific arguments attack inconsistencies in the Regulations, themselves. For instance, Weithorn and Liles point to examples cited in the new Regulations and state that while the Regulations seemed to embrace a per se rule, such a rule is inconsistent with Reg. Sec. 1.513-1(d), which states that "contributes importantly" depends on the facts of each case.

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[11] To the extent that a per se rule is designed to establish a general rule about competition for distinguishing nonprofit and for-profit activities -- based on general principles about these activities or the probability of finding competitive behavior in each -- the rule has a certain appeal, here, as it does in other areas such as the antitrust field. For example, Congress could have intended that the activity of selling advertising always is unrelated to an exempt purpose. However, if the UBIT was designed to make findings about competition and relatedness, in terms of specific exempt purposes for individual trades or businesses, then the per se rule which may be implied by the Regulations fails to accomplish that purpose. We discuss the Supreme Court's decision on this issue, infra.

Weithorn and Liles, supra, 45 Taxes at 806. (The Regulation cited was a "Proposed" Regulation at the time of the article. It maintains, in its present form, the relevant language.) These authors believe that a per se rule which concludes that no advertisements can be "related" is "highly improper." Id. at 807.

Kaplan's interpretation of the new Regulations seems more moderate on this point. He also cites § 1.513-1(d) and appears to conclude that an individualized factual analysis is required by the Regulations. He does not contend that a per se rule is otherwise implied. Furthermore, since he cites the perception of Treasury that the commercial nature of an activity is important under the new rules, and also cites the rules' requirement that the "size and extent" of an activity be considered, (Kaplan, supra, 80 Colum. L. Rev. at 1451-55) his view seems to be that there is some consistency in the Regulations regarding a case-by-case decision on the applicability of the UBIT.

Kaplan also cites the "liberality" of the new Regulations as a probable reason for the smaller number of litigated cases under these rules. Id. at 1452. As we noted above, a number of other writers question whether the 1967 rules are, in actuality, more liberal than those of the 1950s, as Treasury had claimed: the inclusion of advertising as a trade or business indicates a more strict rule to some critics of the Regulations. In addition, we indicated above that, unlike Kaplan, some writers found a per se rule (concerning advertising revenues) implied by the new Regulations, although they questioned the propriety of such a rule. We discussed some of the major arguments made by Weithorn and Liles, on this point, above. We turn next to a further discussion of this issue, including the views of other writers, the effect of the 1969 amendment, and the points advocated in the cases argued before the Supreme Court.

The Liles and Blum and Weithorn and Liles analyses both view the examples provided in the 1967 Regulations as indicating a per se rule. Specifically, Liles and Blum said:

> Moreover, as specified by the examples in the new Regulations, all such advertising is deemed unrelated, whether it be 'general consumer

> advertising' or advertising limited to 'products which are within the general area of professional interest' of the organization's members.

Liles and Blum, supra, 39 Law and Contemporary Problems at 53 (emphasis in original; footnotes omitted). These authors argued that such a per se rule does not do justice to the intent of the nonprofit publisher:

> Albeit, it could be cogently argued that this second category of advertising (e.g., advertising of drugs in a medical association's journal) 'contributes importantly' to the exempt purpose of educating members as to products meeting their professional needs, Treasury's example flatly rejects this argument, stating that the 'publication of advertising designed and selected in the manner of ordinary commercial advertising' cannot be classified as educational. In so reasoning, the Treasury mistakenly looks to the purpose of the advertisers rather than that of the exempt organization publisher.

Id. at 53-54 (footnote omitted). Liles and Blum appear to believe that the nonprofit publisher might have a legitimate purpose to inform through advertising -- thereby publishing "related" advertising -- whereas the purpose of the advertiser would be to sell a product or service.

Nonberg also emphasized the purpose of the exempt organization's publication in his comparison of the motives behind editorial content versus advertising content. As noted above, he describes the latter as being "concerned with commercially exploiting these [exempt] purposes." (See pp. 33, supra). He cites the examples found in the Regulations to support his view that the Regulations stop short of a per se rule. Nonberg states it appears that advertisements within the professional area of interest of an organization's members are "unrelated" if the informational function is incidental. Nonberg, supra, TMM-76-12 Tax Management Memorandum at 7.

Thus, the Regulations are subject to a variety of interpretations. However, there does appear to be a consensus about an appropriate alternative to a per se rule. The critics of an implied per se rule seem to support a "sub-fragmentation" in order to avoid contradiction in the Regulations, and to accommodate the purposes of the nonprofit organization. This sub-fragmentation apparently involves separating advertising activities from editorial activities -- in accordance with the clear intent of the statute and Regulations -- and then further fragmenting advertising into related and unrelated categories to maintain internal consistency in the Regulations, and fairness to the exempt organization. This type of interpretation appears to be, for instance, what Liles and Blum had in mind.

However, the disparities in the analyses of the Regulations and in the examples provided by the Regulations had caused Nonberg and other writers to speculate that the questions about the UBIT and advertising revenues would be the subject of litigation. Id. See also Middleditch and Webster, supra 28 J. Tax. at 178. The need to accommodate these concerns remained after the 1969 amendment. The legislation did not, in the view of some, resolve the controversy.

Liles and Blum discuss a significant ambiguity in the 1969 amendment, which we mentioned above at pp. 35-36. They note that the amendment clearly supports the Regulations' use of the word "activities" and the inclusion of advertising as a "trade or business." However, they suggest that since Congress was silent about the meaning of "unrelated," a nonprofit organization still can argue that its advertising is not subject to the UBIT. In other words, advertising may be a "trade or business" under the statute and the Regulations, but nonetheless "related" to the exempt purpose and therefore not subject to the tax. Liles and Blum, supra, 39 Law and Contemporary Problems at 55.

Consequently, there still was debate about a per se rule, after the 1969 amendment. The parties in the relevant cases (one of which is currently pending before the Supreme Court and the other was recently decided by the Court) identify some of the remaining issues. Included among these issues are practical questions as well as legal ones. For instance, some of the writers who critiqued the Regulations had presaged the issue of the administrative difficulties of case-by-case decisions on the

UBIT.[12] This issue is raised in the Supreme Court cases and is particularly important in applying the UBIT analogy to the Postal Service. The following is a discussion of this issue and others raised in the major cases on the subject.

1. The Medical Journal Cases

The cases interpreting the new Regulations prior to the enactment of the Tax Reform Act of 1969 held that the Regulations erred in defining "trades or businesses" as "activities". Massachusetts Medical Society v. United States, 514 F.2d 153 (1st Cir. 1975), involved the Medical Society's publication, the New England Journal of Medicine. While acknowledging that its advertising was covered under the new Regulations' definition of an unrelated trade or business, it challenged the validity of the new definition in terms of Congressional intent.

The First Circuit squarely addressed the validity of "activities" as a trade or business. Specifically the court stated:

> We concur in the virtually unanimous opinion of commentators that the 1967 regulations contravene the congressional intent in fragmenting an integrated enterprise into its constituent 'activities' in search of an unrelated trade or business under § 513(a).

Id. at 154 (footnote omitted). The court summarized the history of the UBIT and said the legislative history did not support the fragmentation of "trade or business." Id. The court also analyzed the references to trade or business elsewhere in the code. It found most of these references inapposite, and concluded that Congress would not find "this traditional realm of exempt undertaking to be unfair." Id. at 155. Thus, this court -- like the authors we have discussed -- recognized the importance Congress placed on the traditional role of exempt organizations. Finally, the court noted the difficulties in computing deductions if advertising were treated as a separate unrelated business. Id. at 156.

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[12] See Webster, supra, 43 Taxes at 780; Weinberg and Nixon, "What Are the Implications of the Federal Circuit's Holding in American College?," 62 J. Tax. 242, 243 (April 1985).

In a case decided a year later -- American College of Physicians v. U.S. 530 F.2d 930 (1976) -- the Court of Claims followed the holding in Massachusetts Medical Society:

> The same basic contentions were made by the government and rejected . . . in Massachusetts Medical Society v. United States . . . . After careful consideration, however, we agree with the First Circuit's reasoning and the result it reached in that case. Accordingly, we find it unnecessary to do more than set forth the following summary of the First Circuit's conclusions and to adopt them as the basis for our decision in this case.

530 F.2d at 933. The court proceeded to discuss briefly the points cited above.

Once the 1969 amendments validated the fragmentation of a trade or business into activities, parties began litigating other issues like the "relatedness" concept.[13] These cases, in particular, highlighted the debate over a per se rule.

Indeed, in the second American College case (American College of Physicians v. United States, 3 Cl. Ct. 531 (1983)) the parties stipulated that the activity of advertising in their journal -- Annals of Internal Medicine (hereinafter Annals) -- was a regularly conducted trade or business. The question presented to the court was whether the advertising was substantially related to the exempt function of American College.

The United States, as the defendant, relied on an example in the Regulations and argued that the "substantially related" test should be applied to the activity or conduct of advertising, rather than to the product advertised. The court noted that the IRS had not consistently followed the Regulation's example and said it would apply the "contributes importantly" test of relatedness to both the activity of advertising as well as to the product, itself. Id. at 533-34.

We touched on this type of distinction earlier in our discussion. At p. 39, n. 11, supra, we noted the possible intent of Congress to establish a per se rule based on a finding that the activity of advertising always is unrelated to an exempt purpose. We compared this theory with the possible intent to require a factual analysis in individual cases. Related to this dichotomy is the concern of Liles and Blum, noted at pp. 40-41, supra, that a per se rule looks to the purpose of the advertiser rather than that of the exempt organization sponsoring the journal. In this context, the question would be: whether the proper focus is the journal's purpose to educate, for example, including a purpose to inform through "related" advertising, or whether the focus should be the advertiser's purpose -- which is to sell.

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[13] Also, the question of what basic economic characteristics an activity must have in order to be a trade or business currently is before the Supreme Court. We discuss this issue at pp. 58-76, infra.

This question of the proper focus for interpreting the UBIT is relevant to the purposes of the UBIT, itself. We have indicated possible purposes for the enactment of the UBIT, such as concerns about competitive unfairness and the revenue base, a desire to accommodate public interest considerations, and the need for orderly administration of the tax. In our discussion, infra, of the applicability of the UBIT to the postal area, we discuss the relevance of some of these purposes to the unique demands of the postal system. We continue to review the development of the various rationales in the courts, however, before framing the issues in postal terms.

Returning to the Claims Court's decision in American College, the court held that the products advertised in Annals were not substantially related to the College's purposes. (The plaintiff did not claim that the conduct of advertising was so related, and the court therefore did not decide that issue.) In response to plaintiff's contention that their advertising was related because it educated doctors on new developments in an evolving field, the court stated that there was no systematic presentation of the goods or services advertised. The court also noted that certain advertisements were repeated from one month to the next. It said this repetition undercut the argument that the ads were informative about new developments in medicine. It also pointed out that the journal's advertising was similar to commercial advertising. Id. at 534.

As to the proper authority and rule of law to follow, the court quoted from an example in the Treasury Regulations:

> Despite the informational character of the advertising the example concludes that the 'publication of advertising designed and selected in the manner of ordinary commercial advertising is not an educational activity of the kind contemplated by the exemption statute'.

Id. at 535 citing Reg. 1.513-1(d)(4)(iv) Example 7. It proceeded to discuss the issue of whether the advertising was exempt from tax because it was conducted primarily for the convenience of the College's members. In deciding against the plaintiff, the court distinguished between the convenience to the physicians in their capacity as members of the College, versus the convenience in terms of their capacity as practicing physicians. The court acknowledged that this distinction is "subtle" (3 Cl. Ct. at 536), and we believe it is a needless refinement for our purposes; it would entail distinguishing various kinds of mailings (or perhaps even parts of one mailing) in terms of the types of individuals to whom they are sent. We therefore do not address the "convenience" test further, but proceed to a discussion of the treatment of the other issues on appeal.

The Court of Appeals reversed the decision of the Claims Court. First, it addressed the issue of a per se rule. It looked at the legislative history of the UBIT and concluded it did not support a per se rule subjecting all advertising of nonprofit journals to the tax. The appellate court decided, as was suggested by Liles and Blum, (see p. 42, supra) that the Congressional silence on the meaning of "substantial relation" supported this conclusion. The court went further and said that even if Congress did intend a per se rule, it failed to carry this intent through to the statute. American College of Physicians v. United States, 743 F. 2d 1570, 1575 (Fed. Cir. 1984).

The Court of Appeals also held that the Claims Court erred in focusing on the commercial character of the advertising and that, consequently, it had imposed a more rigorous standard than that required by the statute. The appellate court acknowledged that a comprehensive and systematic presentation of the advertising -- cited as necessary by the Claims Court -- would enhance the relationship between the informational content of the advertisements and the College's exempt educational function. However, it also said:

> [T]he failure of the College to take additional steps that may have resulted in a more substantial relation to the exempt purpose does not establish that the content of the advertisements is not already substantially related to that purpose.

743 F.2d at 1577. The court concluded that the trial court erred in finding no substantial relationship between the advertising in Annals and the College's educational purpose. It cited the important educational function of the advertising and found that "the contribution of the advertisements to the exempt purpose is an important one." Id. at 1578.

A writ of certiorari to the Supreme Court was granted, and the parties' arguments on brief highlight the chasm which has developed over the proper scope and meaning of the UBIT.

Of singular importance in understanding these differences is the manner in which the parties phrased the issue before the Court. The government poses the question of "whether respondent's commercial advertising profits are subject to unrelated business income tax." Government's Brief at 8 (emphasis added). It cites the application of the relatedness test as a means to resolve this issue. Respondents -- American College -- on the other hand, cite the question of relatedness of the advertising in Annals to the College's exempt purposes, as the primary issue. Respondent's Brief at 1. The arguments and subissues presented by each party, as reflected in their treatment of the courts' decisions below, the legislative history, the Regulations (and their examples) and the statute, proceed from this basic difference in emphasis: the commercial aspects of advertising, in general, vs. the particulars of advertising in unique factual settings.

For instance, both parties interpret the Congressional intent differently, depending on their view of the legislative history. The government argues that the intent was to achieve "parity" between publications of exempt and non-exempt organizations. Government Brief at 11. It cites the history and commentaries prior to the 1967 Regulations, and states that Treasury intended to fragment nonprofit publications into taxable commercial advertising, and tax-exempt editorial matter. Id. at 15. According to the Government, Congress clearly approved the 1967 Regulations, and by so doing, adopted a "blanket rule" that commercial advertising is subject to the UBIT, although it acknowledges there are exceptions to this rule. Id. at 27-28. As to the portion of the Regulations requiring a factual analysis, the government continues with a line of reasoning grouping all commercial advertising together: it contends this factual analysis was performed by Congress and Treasury for commercial advertising, stating their conclusion to be that commercial advertising is unrelated "as a matter of law."[14] With this focus in mind, the government states:

> In light of the legislative history, the only relevant 'factual' question is that posed by the Regulation itself -- whether respondent's advertising was commercial publicity . . . .[15]

American College also analyzes the legislative history in some detail. Like the government, it states that the 1967

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[14] Id. at 29. American Business Press (ABP), in its brief as amicus curiae supporting the government, makes the same basic point but offers somewhat novel arguments. It cites the pre-UBIT statement of Congressman Lynch that: "We have drawn [the bill] so that there is a certain amount of discretion for the determination of questions of fact as to whether or not a certain matter comes within the purview of the bill." ABP Brief at 10 quoting 96 Cong. Rec. 9368 (1948). ABP contends that the reference is to the discretion of the IRS to administer the tax laws. It describes the Congressional intent as accounting for a per se rule and a factual analysis but in terms slightly different from those of the government: "In summary, when Congress passed UBIT, it enacted general legislation which included publishing and advertising, and granted discretion to IRS to determine where and how the unrelated business tax should apply." ABP Brief at 11 (emphasis in original).

[15] Government Brief at 30 (emphasis in original). The question of "commercialness" is discussed below, from another perspective, in the American Bar Endowment case.

Regulations endorsed a fragmentation principle allowing component activities of an organization to constitute a trade or business. Respondent's Brief at 18. It contends, however, that the 1969 amendment validated only this fragmentation principle, and not -- as the government argues -- a "blanket rule." But just as the government acknowledges exceptions to that rule, American College acknowledges that fragmentation may have the result that most advertising income is taxed. It nonetheless stresses the importance of facts and circumstances of particular cases. Id. at 11, 29.

Thus, each party seems to allow for some validity in the interpretation of the other. For our purposes, it is important that both parties appear to acknowledge, at least vaguely, that in general (although exceptions exist) advertising income does not receive the favorable status accorded to income from editorial matter. We discuss the merits of applying this type of rule to postal affairs, infra.

Despite this possible convergence of views, the particular perspective from which the parties approach the problem remains significant. For instance, American College challenges an emphasis on unfair competition: "Despite references in the legislative history to unfair competition, this statutory scheme [from 1950, and particularly unamended section 513(a)] makes no reference to competition. . . . The key is the 'relatedness' of the trade or business to the organization's exempt purpose." Id. at 16. In contrast to the government's position, American College focuses on individual factual analyses, based on the following view of Congressional intent:

> In sum, although the government repeatedly describes Congress as having 'validated' the regulations and 'placed them in the tax laws' . . . the only issue of validity identified by Congress was fragmentation, and that was the sole aspect of the regulations so 'placed.' In all other pertinent respects, the 1950 legislation and the regulations were unaffected by the 1969 Act. . . . The most that the legislative history suggests is that Congress intended as a general matter to endorse the principles incorporated in the 1967 regulations, primary among which was the 'facts and circumstances' test. Congress did not analyze and

> endorse each and every word, and certainly not any particular applications of any illustrative example.

Id. at 29 (emphasis in original; fn. omitted). American College seems to be more circumspect, generally, about drawing inferences from the legislative history and from the examples in the Regulations. At page 7, supra, we quoted its cautionary note, given the complexity and length of the legislative history. It also construes the examples in the Regulations more narrowly than the government. We turn next to the parties' views of these examples. As indicated previously, they prompted considerable controversy among the commentators who analyzed the UBIT.

The government says that the examples -- particularly number 7 -- support or "clarify" a per se rule that all commercial advertising is unrelated. Government Brief at 16. It focuses on the specific types of advertising involved and the conclusions drawn therefrom: example 6 found "general consumer advertising" unrelated, and was revised to form example 7, which concluded that advertising "which promotes only products in the general area of professional interest of its members" also is unrelated. Id. at 17. The government cites these examples for the principle that: "The Regulation makes absolutely clear that 'professional interest advertising' for products like drugs and medical devices, and 'general consumer advertising' for products like soft drinks and cars, are to be treated identically. . . ." Id. at 8.

Respondent presents four basic counter-arguments about the examples. It points to differences between American College and the types of organizations as well as the types of advertising in the examples. It also claims that a per se rule cannot legitimately be inferred from the examples. Finally, respondent argues that the court of appeals did not invalidate the Regulations, implicitly or otherwise.

As to the first point, Respondent notes that Example 7 refers to an organization exempt under § 501(c)(6), which, it claims, is materially different from one exempt under § 501(c)(3), like American College. Respondent's Brief at 11-12. While it discusses these differences at some length (including differences in purpose), a point which appears to be of particular significance to its argument is that Example 7 does not refer to medical journals or prescription drug ads. Respondent's Brief at 20, 38-42.

Respondent -- like the government -- also discusses the advertising itself, citing the "unique nature of prescription drug ads" and the irrelevance of the design and selection mode to the issue of "relatedness." Id. at 42, 44. Respondent addresses more directly, however, the government's compound argument that all advertising is to be treated alike and all is to be treated as unrelated under the UBIT, as a matter of law. Respondent makes the summary point that: "The examples in the 1967 regulations have been criticized for being conclusory and providing little guidance." Id. at 20 (fn. omitted). It also says that a per se rule, if implied from the examples, would be invalid as inconsistent with the Code and the substance of the Regulations. More specifically, Respondent argues:

> A per se rule would normally be found in a discussion of 'principles' rather than 'examples,' and the 'examples' cannot be described as setting forth 'rules' applying beyond their own particular facts. When an agency's interpretation or application of its own rules flies in the face of the language of the rules themselves, it cannot be accepted. . . .

Id. at 34 (citations omitted). See also Respondent's Brief at 12.

This divergence of views mirrors the various arguments made by the commentators, although the level of detail and the approach vary. For instance, we noted at pp. 38-39 and n. 11, supra, the possibility of Congressional concern about competition, in a broad sense, which would support a per se rule. This theory appears to be consistent with the government's position. We also cited the views of critics of the Regulations, who found a per se rule implied by the Regulations through the examples, and at the same time admitted an internal consistency from acknowledging that implication. We noted that these critics seemed to support a "subfragmentation" approach: a level of fragmentation imposed by the statute and Regulations whereby "activities" like advertising can be trades or businesses, and an additional level separating related and unrelated advertising -- perhaps along the lines of the case-by-case approach advocated by American College. See p. 47, supra.

As we discussed previously, these two divergent views emanate from a difference in emphasis: (1) explaining all advertising as a "commercial activity" which is unrelated because of a public policy need -- reflected in the Regulations and examples -- to avert unfair competition, as a general matter, (2) examining specific facts -- including those in the examples -- to account for unfair competition and relatedness in individual cases, in order to maintain internal consistency in the Regulations, and accommodate the purposes of the nonprofit organization. At pages 79-81, infra, we discuss these distinctions in terms of the rationales which emerge given the Postal Service tradition of distinguishing all advertising from all editorial matter.

Turning to the parties' discussion of the history of the case, we note that their views of the Court of Appeals' decision also differ along the lines just discussed. The government states: "The Federal Circuit has invalidated sub silentio longstanding Treasury Regulations that Congress considered in 1969 and upon which it placed its specific imprimatur." Government's Brief at 41. It argues that under the reasoning of the Court of Appeals: revenues would be allowed to escape taxation, the Congressional policy to keep nonprofit commercial activities on par with those of for-profit ventures would be flouted, IRS administrative resources would be strained and principles of common sense would be violated. Id. at 41-43.

American College responds that the Court of Appeals' reasoning is in accord with other decisions which uphold a case-by-case approach to the UBIT. It argues further that the court did not invalidate the Regulations because Example 7 cannot legitimately create a per se rule. In its discussion of the policy issues raised, Respondent contends that the impact of this case will be limited, given its unique facts and the strict "contributes importantly" standard. It also states that its position is consistent with the primary Congressional concern about "relatedness."

Of particular significance for applying a UBIT analogy to the postal system is the government's argument that a case-by-case approach would be administratively unwieldy: "The practical consequences of the court's open-ended reasoning, moreover, would entail formidable burdens on IRS audit resources. Government's Brief at 42. In response, American College states: "The impact . . . will be limited because few organizations will be able to present as strong evidence linking advertising with their exempt purposes as did the College at trial." Respondent's Brief at 48. As we will explain, _infra_, this issue becomes significant when considering the postal system. Given the nature of the Postal Service, the administrative problems are much more challenging. _See_ pp. 80-81, _infra_.

The unique or specific aspects of the Postal Service are particularly important to bear in mind when considering the recent Supreme Court decision in _American College of Physicians_, 54 USLW 4387 (1986). The Court, in finding against the _per se_ rule argued for by the Government, but also finding against the Respondent's case, propounded rules and accompanying rationales which span the points made by the parties, as well as some of the propositions put forth by the various commentators.

In deciding whether there exists a _per se_ rule against tax exemption for advertising income of non-profit journals, the court reviewed the legislative history and acknowledged that advertising revenues from nonprofit journals may have been looked upon with general disfavor. However, the Court also appeared to agree with the Respondent in concluding that Congress failed to enact any _per se_ rule as law, when it sanctioned the IRS rules in 1969.

In so holding, the Court reasoned that Example 7 in the Regulations was ambiguous about whether certain statements reflected hypothetical facts or conclusions of law and that, as a result, the Example was susceptible to the opposing interpretations put forth by the parties. The Court therefore looked to other circumstances and found the following: Treasury had not announced an intention to promulgate a per se rule when it issued its final rules, as it had with its proposed regulations in 1967; a per se rule would contradict the case-by-case approach of Regulation § 1.513-1(d)(2); commercial advertising in non-profit journals is a "traditional activity" and therefore a per se rule would violate the interpretation of the 1950 Act that customary activities are to be considered "substantially related." The Court concluded:

> Thus, in 1967 the idea of a per se rule of taxation for all journal advertising revenue was sufficiently controversial, its effect so substantial, and its statutory authorization so tenuous, that we simply cannot attribute to the Treasury the intent to take that step in the form of an ambiguous example, appended to a subpart of a subsection of a subparagraph of a regulation.

United States v. American College of Physicians, 54 USLW 4387, 4390 (1986).

The Court then turned to a discussion of Congressional intent on the issue of a per se rule. It concluded that the legislative history merely supported the decision to fragment a "trade or business", and did not reach the other two aspects of the UBIT test: "regularly carried on" or "substantial relatedness." It noted, too, that Congress did not enact the Regulation's definition of "substantial relation." The Court concluded that the legislative history, therefore, did not indicate a Congressional intent to resolve the relatedness aspect of commercial advertising in specific cases:

> The truth is that, other than a general reluctance to consider commercial advertisements generally as substantially related to the purpose of tax-exempt journals, no Congressional view of the issue emerges from the quoted excerpts of the [Committees'] Reports. Thus, despite the Reports' seeming endorsement of a per se rule, we are hesitant to rely on that inconclusive legislative history either to supply a provision not enacted by Congress . . . or to define a statutory term enacted by a prior Congress. . . . We agree, therefore with both the Claims Court and the Court of Appeals in their tacit rejection of the Government's argument that the Treasury and Congress intended to establish a per se rule requiring taxation of income from all commercial advertisments

> of all tax-exempt journals without a specific analysis of the circumstances.

54 USLW at 4390 (citations omitted; emphasis in original).

Given this rejection of any per se rule regarding the UBIT and commercial advertising in nonprofit journals, we must consider the implications of this portion of the Court's holding for the Postal Service. To the extent that the Court's opinion construes the UBIT and the Regulations as leaving open the question of commercial advertising and its relatedness to the nonprofit journal's purposes, we do not intend to controvert that holding and reasoning, by virtue of our suggested application of a UBIT analogy to second class. It is important, however, to recall that the Court relied on the specific wording and legislative history of particular tax provisions -- not on a general principle disfavoring per se approaches to the question of relatedness. As we explain in greater detail, subsequently, our review of the history and traditions of the Postal Service, and taking into account its manner of operations, leads us to recommend -- for these particular reasons -- a per se rule excluding advertising in second-class nonprofit journals from the preferred rates, as one alternative for Congressional consideration. As we have indicated, a "UBIT analogy" means no more than employing the UBIT as a conceptual model, while also taking into account the peculiar needs of the Postal Service. Thus, our choosing one alternative theory from the history of the UBIT does not mean we take issue with another theory preferred by the Supreme Court. Rather, it means that a search of the underpinnings for the UBIT has led to a rationale which will be a viable and workable alternative, given the complexities of the Postal Service.

Furthermore, despite Third Class Mail Association's concern (Letter of Herb Gertz, Executive Vice Chairman, TCMA, to Charles L. Clapp, dated April 25, 1986, at p. 2) about an approach which focuses on "administrative feasibility," we believe that a standard which balances the desire to promote benevolent activities with the need to eliminate the targeted abuses, sometimes swings toward one end of the spectrum. In the case of second-class, we believe that one feasible administrative standard which immediately comes to mind is to eliminate the preferred rate for all commercial advertising and maintain that rate for editorial content -- a very familiar distinction to most second-class mailers. As will also be explained, subsequently, we propose a different standard to balance the interests and needs involved in the third-class nonprofit category. Again, we discuss these issues more fully, infra. We turn next to the Supreme Court's holding regarding the particular facts of American College.

After rejecting a per se rule, the Court focused on the issue of whether the "business of selling advertising space" (54 USLW at 4390) -- in this case -- is substantially related to, or contributes importantly to, the purposes for Respondent's tax exemption.

The Court's terminology in framing the issue this way is significant. It rejected Respondent's argument that the content and selectivity of the advertising, itself, is determinative, as well as Respondent's position that relatedness depends on the benefit to the subscriber. Instead, the Court accepted the government's view (accepted by the Claims Court) which looks to the conduct of the publishers of the tax exempt organization: "We believe that the Claims Court was correct to concentrate its scrutiny upon the conduct of the College rather than upon the educational quality of the advertisements." Id. at 4391.

The Court said that the "modicum" of informational value contained in all advertisements is not sufficient to satisfy the "contributes importantly" standard, noting that the statute and regulations are "clearly antagonistic to the concept of a per se rule *for* exemption for advertising revenue." Id. at 4391 (emphasis in original). It supported its reasoning that the conduct of the organization is crucial by citing the statute, which refers to the "conduct" of a trade or business, as well as through the Regulations, which refer to the manner of structuring and selecting advertising. While rejecting Respondent's claim of relatedness in this case, the Court suggested a course of conduct which might comply with the "contributes importantly" standard:

> This is not to say that the College could not control its publication of advertisements in such a

> way as to reflect an intention to contribute importantly to its educational functions. By coordinating the content of the advertisements with the editorial content of the issue, or by publishing only advertisements reflecting new developments in the pharmaceutical market, for example, perhaps the College could satisfy the stringent standards erected by Congress and the Treasury. In this case, however, we have concluded that the Court of Appeals erroneously focused exclusively upon the information that is invariably conveyed by commercial advertising, and consequently failed to give effect to the governing statute and regulations.

Id. at 4391.

The Court's proposed qualifying scenario and its emphasis on the conduct of the publisher regarding both advertising and editorial content seems to resolve some of the distinctions in purpose mentioned by the commentators. As discussed earlier, Liles and Blum posed dichotomies between the publisher's and advertiser's purpose, and Nonberg distinguished the publisher's motives behind the editorial and advertising content. The Supreme Court's opinion suggests that -- in order to qualify as tax exempt -- both types of content are to be coordinated by the publisher with the single intent of contributing importantly to the exempt purposes.

As always, we must consider the workability of a UBIT rule in the postal context. It is doubtful whether such inquiry into the motives of publishers would be practical given the demands of postal operations.

We examine this relatedness standard and its applicability to the Postal Service in more detail after reviewing other significant issues on the UBIT which currently are being litigated before the Supreme Court.

2. The ABE Case

Another UBIT matter, currently before the Supreme Court, concerns an equally basic concept. This is United States v. American Bar Endowment, S. Ct. No. 85-599, reviewing a Federal Circuit decision reported at 761 F. 2d 1573 (1985), and a Claims Court decision [4 Cl. Ct. 404 (1984)] partly affirmed thereby. The issue is one not of relatedness (which was concededly absent) but rather of what makes an activity a "trade or business" for UBIT purposes, and what criteria should be used in that determination.

The 1967 Regulations altered the previous definition, to make it clear that an activity amounting to less than the whole of an integrated enterprise could itself be a "trade or business." Neither they nor the 1969 legislation that validated them dealt comprehensively with the broader question of what characteristics an activity (or enterprise) must have in order to be a "trade or business" rather than, e.g., a charitable fund drive. The Senate Report on the Tax Reform Act of 1969 did observe that

> The committee, also, intends that when organizations send out low cost articles incidental to the solicitation of charitable contributions, the amounts received are not to be considered as being in exchange for the low cost articles where it is clear that the contributions, less a reasonable administrative cost, fully accrue to the exempt organization.

S. Rep. No. 91-552, quoted in Disabled American Veterans v. United States, 650 F.2d 1178, 1186 (Ct. Cl. 1981). The Regulations were amended to reflect this intent, with an interpretive twist reflecting the importance of competition as a basis of the UBIT:

> (b) Trade or business. The primary objective of adoption of the unrelated business income tax was to eliminate a source of unfair competition by placing the unrelated business activities of certain exempt organizations upon the same tax basis as the nonexempt business endeavors with which they compete. On the other hand, where any activity does not possess the characteristics of a trade or business within the meaning of Section

> 162, such as when an organization sends out low cost articles incidental to the soliciation of charitable contributions, the unrelated business income tax does not apply since the organization is not in competition with taxable organizations . . . .

Reg. Sec. 1.513-1(b). However, the same provision expresses the general view that "trade or business" includes "any activity carried on for the production of income from the sale of goods or performance of services."

The clearest sort of case -- where the recipient of a premium has no obligation to respond to the request for a contribution -- is exemplified by Hope School v. United States, 612 F. 2d 298 (7th Cir. 1980), where the gift premium was a box of greeting cards which the addressee might keep whether he contributed or not. Rejecting the government's argument that a "gift" had to be made without any expectation of economic benefit (thus disqualifying the premium, which was intended to induce economic benefits in the form of contributions), the court relied on the procompetitive rationale of the UBIT. It found no danger to taxpaying card businesses, and made it plain that while other factors may be considered, competitive impact is the primary one. 612 F. 2d at 303-304.[16] As the Court of Claims later summarized the matter,

> . . . If [the organization] had mailed the premiums with its solicitations and had informed the recipients that the premiums could be retained without any obligation arising to make a contribution, it would be clear that this was not an activity operated in a competitive manner and, therefore, was not a trade or business for purposes of a UBTI determination.

Disabled American Veterans v. United States, 650 F.2d 1178, 1186 (Ct. Cl. 1981). This decision exemplifies the more difficult case: where there is a sale of goods or services, yet some question remains whether the activity constitues a trade or business in the statutory sense. The DAV offered various premiums "in exchange for prior contributions in stated amounts." 650 F.2d at 1187. The court found that this might well amount to a contract of sale, but went on:

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[16] The Hope School fundraising scheme also included provision for reordering further supplies of cards. The court specifically did not decide whether income from reorders (where, presumably, there was no option about paying for what one received) would be subject to the UBIT. It is possible to read the decision as implying that it would.

> . . . Nevertheless, in view of the legislative history which clearly indicates that, to constitute a trade or business for UBTI purposes, the activity must be conducted in a competitive fashion, if the contribution required for any one premium was set at an amount greatly in excess of the retail value of the premium item concerned, a competitive situation would not be present. . . .

Ibid. By this test, some of the DAV's premiums were found to be part of a trade or business and some were not. The Court of Claims's approach stresses the importance of competition as a prerequisite for applying the UBIT. It acknowledges that actual competition need not be present (see Kaplan, supra, 80 Colum. L. Rev. at 1467; and discussion at p. 37, supra) in order to make income taxable (ibid.); its position appears to be that offering an article at substantially more than its retail value is simply -- perhaps as a matter of law -- not a commercial activity and therefore cannot compete with a (hypothetical) commercial enterprise offering the same item at a market-determined price. The government's position that anything done in the hope of gain is a trade or business was thus rejected.

This point is among those currently before the Supreme Court in the American Bar Endowment case. Brief for the United States, S. Ct. No. 85-599, at 16, 23-25. That case involves a group insurance program of the American Bar Endowment, a charitable educational organization affiliated with the American Bar Association. The program funds legal education and research through a requirement that insureds assign their dividends to the ABE. The exceptionally favorable actuarial experience of the group, coupled with the fact that the ABE sets the premium "at a level competitive with other insurance on the market" (761 F. 2d at 1575), has produced large dividends. Insureds are told of the amount of dividends ABE recoups and applies to its purposes (commonly 30-40 percent, and sometimes 50 percent, of premiums paid). The ABE also furnishes its opinion as to the amount each insured may claim as a charitable deduction.

The Claims Court found that the ABE had sought to maximize dividends, influencing the insurers to keep premiums relatively high though not prohibitive and sacrificing broad participation in favor of high dividends (4 Cl. Ct. at 406-407). It also consciously benefited from the favorable mortality and morbidity experience of ABA members as a group and from the float generated by semiannual collection from insureds and annual payment to the insurers. In 28 years of operation this strategy had been "fabulously successful," netting $82 million in dividends of which $63 million was devoted to charitable purposes. Id. at 408. The court then turned to the question whether this dividend revenue was taxable under the UBIT.

In doing so, the Claims Court relied heavily on Disabled American Veterans, and in particular its criterion of "operat[ion] in a competitive, commercial manner."[17] Its answer was that "it [is] impossible to conclude that the insurance programs were operated by ABE in a competitive, commercial manner." 4 Cl. Ct. at 411. Turning to the statutory language, the court held that because "[t]he amount of money ABE is permitted to retain far exceeds the value of any service it may be providing," the insurance program does not earn money from the sale of goods or performance of services [the test of section 513(c)].

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[17] It is fair to say, however, that Chief Judge Kozinski's analysis is much more sophisticated than the literal language of Disabled American Veterans would suggest. The older case can be read as prescribing a simple "fair market value" test: if the contribution required for an item sufficiently exceeds that value, then the program is fundraising rather than commercial sale. The Kozinski approach casts the question as one of intent and motivation ("Disabled American Veterans requires a determination as to the motivation of the participants in the transaction." 4 Cl. Ct. at 409), rather than just a numerical comparison. This allows -- and may indeed require -- consideration of nonprice evidence, such as the history of the ABE program, the perception of it on the part of both participants and ABE members who disapproved of its direction, the way facts about it were presented by its management to its patrons, and the fact that if charitable motives were not uppermost the members could be expected to redirect the program in their own self-interest. Id., at 409-411. This kind of historical inquiry is methodologically appropriate for deciding whether a program is commercial or charitable, for UBIT purposes; but it is questionable whether it is "required" by Disabled American Veterans.

The government, however, had argued that ABE's rates were within the competitive market range -- and thus failed to meet the Disabled American Veterans test. Since the court found that the ABE rates were in that range, for some (though not all) purchasers (id., at 412, fn. 10) it had to elaborate still further on the rationale of the earlier case:

> Nothing in Disabled American Veterans suggests that price disparity is the only factor the court may consider in differentiating a fund-raising activity from a business. The broad teaching of Disabled American Veterans is that the court should compare the operation of the activity in question with normal business practices to determine whether the enterprise is being run in a commercial fashion. . . . Here, the fundraising activity is operated so differently from that in Disabled American Veterans that the comparison of the rates charged with others available in the market proves not to be a decisive factor. The premise of a business transaction is negated by the fact that ABA/ABE members . . . have permitted the Endowment to collect exorbitant revenues when they could easily deny it any income if they so desired.

At this point, it became necessary to distinguish several cases holding group insurance programs to be within the "trade or business" category and thus taxable.[18] The Claims Court began by pointing out that all these taxpayers had been section 501(c)(6) business leagues -- by definition incapable of performing "charitable" activities, and hence of entertaining the charitable motives for operating an insurance program which were present in the ABE's case.[19] That being so, the court reasoned that the business-league cases were inapposite; there was no need in them for the "sensitive analysis" required by Disabled American Veterans to determine whether an activity conducted by a charitable organization was itself charitable or entrepreneurial. It also distinguished them on the facts, pointing out that the business leagues' fees for conducting the programs were in the normal commercial range of 2.5 to 8 percent -- far less than the 40 to 50 percent dividends recouped by the ABE.

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[18] Carolinas Farm and Power Equipment Dealers Assoc. v. United States, 699 F.2d 167 (4th Cir. 1983); Louisiana Credit Union League v. United States, 693 F. 2d 525 (5th Cir. 1982); Professional Insurance Agents v. Commissioner, 78 T.C. 246 (1982), affirmed, 726 F.2d 1097 (6th Cir. 1984).

Finally, the court turned to the procompetitive legislative purpose underlying the UBIT, and inquired whether the ABE's program "ha[d] an anticompetitive effect or otherwise place[d] tax-paying enterprises at an unfair disadvantage." 4 Ct. Cl. at 413. After pointing out that the ABE did not underwrite insurance (it employed New York Life and Mutual of Omaha to do this), that its high premiums tended to divert some potential insurance business to other sources, and that only one organization (ABE, itself) could act as group-insurance intermediary for its own members, the court concluded:

> The absence of any identifiable business over which the ABE is able to gain an unfair advantage supports the conclusion that its activities are not commercial and therefore not a business. At the very least, it suggests that nothing in the policies underlying the UBIT requires that the Endowment's activities be taxed. Indeed, it appears that the Endowment's activities have an entirely procompetitive effect, fully consistent with the policies of the UBIT.

Id. at 414.

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[19] Contributions to a business league are deemed to have a business purpose and are not deductible as charitable contributions under section 170. On the other hand, dues to such an organization are deductible as a business expense. 4 Cl. Ct. at 413.

Possibly parts of this analysis approach too closely the inquiry -- disclaimed in Disabled American Veterans -- whether actual competition is present. However, the Claims Court's recognition that it is sometimes difficult to distinguish pure fundraising from commercial activity is analytically valuable. It provides a conceptual link between the two lines of authority recognized in Louisiana Credit Union League, supra at 62 n. 18: the cases concentrating on competition as the key test for trade or business status, and those applying a simple "profit motive" criterion. 693 F. 2d at 540-541. It is possible, by drawing the fundraising/commercial activity line accurately, to avoid both (i) narrowing the UBIT to situations where actual competition is present or threatened (a reading disapproved in Louisiana Credit Union League), and (ii) broadening it to include every activity that produces net gains, regardless of its relationship to the normal commercial activity of for-profit concerns. For example, cases like Hope School, where there is not even an obligation to pay for the article distributed, can be safely characterized as noncommercial activity. Making a donation optional with the recipient stamps the program as charitable fundraising and not a trade or business -- even if for-profit enterprises offer similar merchandise for sale.[20] Perhaps the reason is akin to the analysis offered by Bittker and Rahdert, supra, 85 Yale L.J. at 307-308, who question whether the tax code's concept of "income" is meaningful when applied to at least the traditional activities of nonprofits.

It is clear from this analysis that the intent of the recipient of goods or services may have something to do with the nature of the nonprofit's activity. Where the recipient has no obligation to send money in exchange for the merchandise, the intent to make a charitable gift clearly emerges when he does. This analysis can be extended to at least one further case: That where, if the recipient's sole motive were to obtain the good or service in question, he could do so more advantageously in the commercial market -- but he chooses to purchase at a manifestly disadvantageous price from the nonprofit entity. This is the fact situation found in Disabled American Veterans and elaborated upon in the ABE litigation. Those opinions postulate, in effect, that when assessing the applicability of the UBIT such a recipient's behavior cannot be explained in economic terms alone, and must therefore include a charitable intention as well as a desire to obtain a good or service. 4 Cl. Ct. at 412.

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[20] One of the "profit motive" cases -- Carolinas Farm & Power Equipment Dealers Assoc. v. United States, 699 F.2d 167, 170, fn. 5 (4th Cir. 1983) -- expressly recognizes the logical possibility of "an activity conducted to earn income, but in a noncommercial manner" and seems to concede, though without deciding, that it might not be a trade or business.

If this is the case, then that recipient ceases to be an object of competition between the nonprofit and an actual or hypothetical for-profit firm offering the same goods. If he entertained no charitable motives but simply wished to acquire the goods, he would compare prices and purchase at the lower figure. Where nonprofit's price is clearly higher than market, the same economic theory that accounts for price competition in general will predict that either (i) the recipient will reject the nonprofit's offer, or (ii) if he does accept it, he will do so because he wishes part of the purchase price to be a charitable gift. Since a for-profit enterprise by definition cannot be the donee of a charitable gift, the latter scenario implies a legitimate charity-donee relationship and thus the recipient in case (ii) turns out to be "beyond the reach" of competitive theory. The recipient is therefore of no interest from the UBIT standpoint, at least on that reading of the law which stresses fair competition as the main statutory policy.

Furthermore: insofar as the nonprofit is attracting charitable donations, then it is not seeking income in the statutory sense. (If it were, then "pure" fundraising by appeals to disinterested generosity would also produce taxable income.) If it is not seeking the production of income as the tax code uses the term, then, on any reading of the UBIT, it is not conducting a trade or business.

This allows us to tie together the concepts of "noncommercial" and "noncompetitive" as bases for exemption from the UBIT. It also lets us identify cases where charitable intent does not enter into the recipient's decision to buy from the nonprofit: where the only bases for choosing a vendor are the ordinary competitive ones (price, quality, etc.), then both competition and income-seeking are present, and we are dealing with a trade or business in the statutory sense. In what follows, we will examine the later history of the ABE case from this standpoint.

Because the Claims Court decided not only that the ABE was not subject to the UBIT, but also that individual members had not justified their claimed charitable deductions for the part of their premiums that exceeded fair market value, both sides appealed. The Federal Circuit explicitly affirmed on the UBIT point, adding only a further distinction of the Fourth, Fifth and Sixth Circuit group insurance cases and a response to the government's argument that

> . . . the Endowment set its rates "with reference to the rates for other insurance available in the market" and thereby maximized its receipts, i.e., the Endowment set out to make as much "profit" as possible. . . . The Government concludes that this objective is characteristic of a commercial enterprise and results in direct competition with other group insurance services.

761 F.2 at 1577-1578. In rejecting this contention, the court pointed out that it did not find profits the "controlling basis" for applying the UBIT:

> . . . We consider not only the amount of money the charitable organization receives, but the source and character of those funds. In this connection the Claims Court specifically and permissibly rejected the Government's contention that the dividends represent a payment for the Endowment's services. Because the Endowment's accumulation of funds was not the result of a commercial exchange, we agree with the Claims Court's view that the dividends do not constitute "profits" which fall within the definition of section 513(c). A charity should not be subject to taxation merely because its charitable solicitations are successful. This would,

> however, be the result if we adopted the IRS' reasoning in this case.

Id. at 1578 (fns. omitted).

The Federal Circuit reversed the lower court's treatment of the individual deduction claims. The Claims Court had constructed a simple economic rule: the taxpayer must show he had forgone a "better deal" on insurance in order to demonstrate the requisite charitable intention in buying from the ABE. The appellate court found this too simple, holding that no single-factor analysis could determine the charitable intent question.[21]

Thus the government had now lost both phases of the case, and it obtained review by the Supreme Court of both questions. We will focus on the UBIT issue.

One might sum up the opposing positions, very roughly, by saying that --

1. The government contended that the Endowment's program was insurance, and therefore was a business under the UBIT; while
2. The Endowment contended that its members' intention was to contribute their insurance dividends to educational purposes, and so the program was an exempt charitable fundraising device.

After arguing, on the basis of text and legislative history, that the term "trade or business" includes any activity regularly carried on to produce income from the sale of goods or services (Brief for the United States, at 16-20), the government applied this proposition to group insurance sponsored by tax-exempt groups (Id. at 20-22). It then described the ABE program, arguing that it clearly involved selling goods (insurance) and services (assembling a desirable group, selecting underwriters, negotiating, and administration) (Id. at 23) and that all this was done for production of income (Id. at 23-24). Because the money came from premiums (if the members were considered the source) or dividends (if the underwriters were), the government thought it clear that the insurance business produced it. It then described the Fourth, Fifth, and Sixth Circuit decisions cited above, and urged their indistinguishability from the ABE situation. Id. at 25-28.

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[21] While not directly relevant to the "trade or business" issue, the Federal Circuit's treatment of this issue (761 F.2d at 1579-1583) is worthy of attention for its attempts to identify factors that might show charitable intent -- and for its (presumably unintentional) demonstration of the complexity of this inquiry. By nature, the question whether a given taxpayer had a charitable intent justifying a deduction is an individualized one. No such issue can arise in the postal rate context, where at the time of the Postal Service-mailer transaction the individual recipients who may be moved by the mailpiece to act (on charitable, economic, or mixed motives) cannot even be identified.

From this argument, the government turned to an attack on the lower-court decisions that the program was not a "trade or business." The IRS's focus on the external nature of the activity as determinative of its "trade or business" character is illustrated at p. 32:

> . . . it is legally irrelevant that [ABE's] promotional materials "consistently refer[] to [its] charitable endeavors" and describe the insurance program as "a fundraising activity" . . . . "Fundraising," after all, is just a synonym for "making money." Whenever a charity makes money, from an unrelated business or otherwise, its activity can be styled "charitable fundraising" because the income is destined for -- indeed, must, if the charity is to retain its exemption, be used exclusively for -- charitable purposes. The profits that NYU once made by selling spaghetti through its macaroni factory . . . could equally well have been labeled "charitable fundraising," since the funds financed education.

As to the attitudes of the members the government argued that whether they "may choose its insurance over a comparably-priced competitor's because they want [its charitable] endeavors to thrive" is equally irrelevant.[22] Ibid.

The factual finding that ABE's premiums were in the competitive range was also pointed out as showing that the plan operated in "a competitive profit-seeking manner" and was thus a trade or business. Id. at 35-36. The government went on to argue that the consent and support of the membership were irrelevant (id. at 37-39) and that since the market share involved would be quite attractive to for-profit enterprises, the ABE plan is within the policy of the UBIT to eliminate unfair competition from nonprofits (id. at 39-40).

The ABE of course relied heavily on the factual findings of the Claims Court, which it charged the government with ignoring. In addition, it controverted the government's factual interpretation of its operations, arguing that it performs no functions other than those of group policyholder, receives no compensation from the underwriters, and -- as the Claims Court found -- cannot be supposed to have been simply "compensated" by its member-insureds at rates of 40-50 percent of gross premiums. Brief for Respondents at 25-29. The only reasonable conclusion, it said, is that these revenues were charitable contributions by its members, and thus not income from a trade or business. Id. at 29.

The three group insurance cases relied on by the government, according to the ABE, are irrelevant because the associations there actually rendered, and were compensated for, insurance services of a commercial nature. Id. at 32-34. It attacked the government's theory that the Endowment bought insurance "wholesale" and sold it to members "at retail", saying that the lower courts' findings were otherwise, and that the ABE was not even qualified under state law to deal in insurance. Id. at 35-36. Finally, ABE contended that the plan presents no possibility of tax abuse, noting, among other things, that in the 28 years of its existence it has remained unique among professional organizations. Id. at 37-38.

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[22] The government may, of course, be putting the rabbit into the hat by referring to "comparably-priced" competitors. If it would admit the relevance of a showing that ABE insurance cost more than comparable-quality insurance from another source, then the members' charitable attitudes are material. An unrelated business does not cease to be such just because its product is unintelligently priced (though in time it may cease to function at all for that reason).

It is safe to say, however, that the underlying theme of the ABE brief is the mirror image of the government's: that the revenue in question came from charitable donations by members, in the form of waived dividends, and not from a commercial venture:

> The Government seeks to establish the relevance of the trade association cases by asserting that the common objective, here as in those cases, was "to earn a profit." . . . Following this reasoning (that is, to generate "profit" is the same as to generate revenue), it can be said that both General Motors and the United Way seek "to earn a profit." Yet the fundraising of United Way, even though accomplished by a large staff performing many functions, is obviously different from the profitmaking of General Motors. In the broadest sense every charity seeks to maximize the "profits" from its "fundraising"; but this does not mean that in every case "profit" indicates the existence of a trade or business or is the equivalent of income derived from the sale of goods or the performance of services.

Id. at 34-35 (fns. omitted).

It is no part of our task to settle this question, or predict how the Supreme Court will do so. What is clear is that this issue is of a somewhat different kind from the central dispute in American College of Physicians. There the question was what general rule to create for the application of a specialized statutory concept (relatedness): as regards journal advertising are we to have a per se rule or a rule mandating case-by-case analysis?

The ABE case turns in large part on a more diffuse, and perhaps more basic, issue that has as much to do with economic ideas as with the terminology of the tax code. We saw that it was possible for the government and the Endowment to take utterly opposed views of the basic nature of the insurance operation. Of course the decision as to which is right must take the form of an interpretation of statutory terms ("this kind of insurance plan is [or "is not"] a 'trade or business' within the meaning of the UBIT.") The reasons for deciding one way or the other are likely to cut deeper.

These deeper reasons are important precisely because the sweep of the income tax is potentially broad enough to include every kind of revenue from any kind of transaction.[23] Because eligibility for exemption sometimes, as here, turns on the applicability of rather cloudy concepts not defined in the Code, these basic questions have to be faced and resolved.

There is no necessity, however, to do this when we think about changing the postal laws to alter eligibility for subsidized rates. It would be possible, for instance, to abandon the present test embodied in the Postal Reorganization Act -- which looks only to the type of organization -- in favor of one which required the mailing to be "related" in the UBIT sense to the organization's charitable purposes. As we argue below, this would materially restrict current eligibility. But, as we also explain, adding the concept of "trade or business" to that of "unrelatedness" would not result in a better test for reduced-rate eligibility.

In the first place, the Congress has already supplied a narrower standard: "mail which advertises or promotes the sale of, recommends the purchase of, or announces the availability of any article, product, service, insurance, or travel arrangements." Probably mail sent in furtherance of a purpose other than a trade or business would seldom fall under any of these descriptions.[24]

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[23] Whatever the merits of the Bittker and Rahdert view that nonprofits perhaps cannot be said to have income in the normal sense -- and therefore may be "inherently" untaxable -- the current formal rule is that they are exempt from income taxation by reason of positive legislation.

Moreover, the postal subsidy we are studying, whatever its merits as a social and political mechanism, is entirely artificial from the economic standpoint. There is nothing in the economic nature of the eligible organizations that makes it irrational to want to charge them regular postage rates; hence the generalized idea of "trade or business" is not needed as a bridge between nonprofit status and obligation to pay regular postage.

By contrast, in the income tax area it does seem to have such a function. Some bridge between nonprofit status and taxability is necessary because, as we have seen, nonprofit status and taxation of net income are sometimes difficult concepts to fit together. (As noted above, it is possible to criticize the government's very broad construction of the term "trade or business" as leaving no very strong reason to refrain from taxing, as income to the charity, the direct gifts it receives in response to its appeals to disinterested generosity.)

If we grant that (i) it is unsatisfying to assume that all the receipts of a nonprofit charitable entity, including pure gifts, could be taxed as income, and (ii) these entities carry on some activities (other than collecting pure gifts) which we want to subject to income tax for fiscal and competition-policy purposes, it is necessary to invent an intermediate category to contain these activities.[25] In the existing UBIT, the only suitable candidate is "trade or business."

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[24] It is possible to conjure up cases -- a religious retreat, with bus transportation supplied by the church, for instance -- that would probably be outside the area Congress targeted yet would still fall within the literal terms of the Reconciliation Act. That this possibility exists - and is worrisome to Congress -- is one reason the PRC was enlisted to conduct a study and recommend more precise legislative language.

"Relatedness" will not serve the purpose. While it is possible to describe some activities as "related" or "unrelated" -- indeed, we have to do so under the present UBIT -- we cannot always do so. Leaving aside such cases as the bequest to a charity without specification of the purpose for which it is to be spent (since, qua bequest, it would not be taxable income), how should the interest on a bank account be characterized? There is nothing inherently "related" or "unrelated" about passive earnings of this kind. They might well be spent on objects unrelated to the primary charitable mission, but this has not been viewed as making them taxable.[26] If the idea of relatedness is to be applicable at all, we need to limit the range of its application to activities in the strict sense: patterns of behavior which can be characterized as related or unrelated to the charitable purpose without reference to the income they (may) produce. Given the Congressional objective in 1950, which as we indicated above was largely to halt "unfair" competition by tax-exempt nonprofits with for-profit enterprises, it made sense to set the limits in such a way as to put all nonprofit-owned businesses on the same initial footing as all entrepreneurial ones; this entailed using the section 162 idea of "trade or business" as a boundary marker.

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[25] We could argue that this is what Congress did in 1950. Under the Trinidad-Roche's Beach destination-of-income test, all receipts were treated the same regardless of source. Congress did not reverse this policy and accommodate pure gifts by an exception (which it could have done by making nonprofits fully taxable in the first instance, and exempting only certain kinds of income). Instead, it sought to characterize some types of nonprofit activity and strip them of the normal exemption.

[26] It might, if carried to excess, result in state law sanctions against the nonprofit, or in loss of the section 501(c) exemption. The important point is that it does not bring the UBIT into play.

Postage, on the other hand, represents one side of a transaction between the mailer and the Postal Service. From the mailer's point of view, it is an input cost. That this input is supplied by a federal agency may make its cost superficially resemble the income tax, but in fact the costs are quite different. Any reduction by the seller of an input in the price asked of a nonprofit buyer, because of the buyer's nonprofit status, can be attributed to either (i) a charitable motive or (ii) an indirect economic motive (*i.e.*, the favorable publicity stemming from the seller's image as a benefactor). (In a simplified model where only seller and buyer were counted, only the charitable motive could be postulated.) But there is no way to argue that it is logically inappropriate to charge the standard price for that input, even to a nonprofit purchaser. This kind of argument definitely can be made for the income tax, as the elaborate analysis of Bittker and Rahdert shows. There are definite conceptual difficulties to overcome before we could show that we refrain from taxing charities on their (nonbusiness) income solely because of a national "charitable motive." Bittker and Rahdert, *supra*, 85 Yale L.J. at 304-314.[27]

To summarize: the income tax and postal rate situations are different because only in the former is there a need to add a descriptive label to (some activities of) nonprofit entities in order to justify applying the income tax to them. The logical obstacles to taxing the income (in the Internal Revenue Code sense) of a nonprofit entity can be overcome if we show that the entity in question is not wholly or purely "nonprofit." If a segregable portion of its activities can be described in language ("trade or business") normally used of entities whose taxability no one questions, then it becomes logically a simple matter to tax those activities. However, since there is no such logical obstacle to a seller's charging a nonprofit entity the same price for a good or service that it charges to every other buyer, no such extra label is needed in order to justify doing so. A seller may, of course, entertain a charitable motive for offering nonprofit buyers a discount; in a sense, that is what Congress, on behalf of the Postal Service, is doing through the existing nonprofit rate. But there is no logical compulsion to do so, and no need for a special justification to reduce or discontinue the discount.

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[27] *But cf.* Hansmann, *The Rationale for Exempting Nonprofit Organizations from Corporate Income Taxation*, 91 Yale L.J. 54 (1981) in The Economics of Nonprofit Institutions - Studies in Structure and Policy (S. Rose-Ackerman ed. 1986).

Consequently, in examining the application of UBIT concepts to postal rate problems, we will be concentrating on the idea of relatedness.

The relatedness standard is an appropriate model for deriving standards of eligibility for both second- and third-class nonprofit mail. But the unique characteristics of each mail category requires different applications of this standard so that it can be usefully applied to each class.

For instance, under the tax law, all nonprofit journals -- without much in the way of distinction -- can be guided by the UBIT standard for all publications in which editorial and advertising matter are at issue. In the Postal Service, such publications can be similarly grouped for the application of one standard and in fact are collected under the "second-class" classification. This grouping has significance for the qualifying content of the mail -- *e.g.*, journals -- as well as in terms of the Postal Service operations and regulations which accompany that category.

Concerns like content and operating procedures form part of the basis for classification distinctions between "second-class" mail and mail grouped as "third-class." For instance, a *per se* rule against subsidized advertising may be viable for nonprofit second-class -- as we suggest -- but will not necessarily be workable in the third-class nonprofit category, which contains many pieces of pure advertising matter; and which historically, has been considered the "correct" classification for material whose basic purpose is to advertise. *See e.g.*, Complaint of

Tri-Parish Journal, Inc. d/b/a/ River Parishes Sun, PRC Op. C85-2 at paras. 306-307, November 20, 1985; Complaint of ADVO-SYSTEM, INC., PRC Op. C85-1, January 24, 1986. In the section which follows, we discuss some alternatives for the application of the relatedness standard given these differences. We dispose first of paid advertising in second class, and begin with a discussion of some practical uses for the principles discussed in the case of American College of Physicians.

VI. Why the Government Position in American College of Physicians is the Correct Analogy For Nonprofit Mail Rate Reform

One of the primary issues before the PRC is the proper treatment of paid advertising in nonprofit periodicals. The zoned advertising rate for these publications is substantially lower than that for regular publications; for-profit publishers have complained of the competitive advantage this gives their nonprofit rivals. See Tr. 1/51-61; Tr. 5/88-92; Id. at 94-102. Some guidance on this issue can be found in the arguments adduced in the American College of Physicians case. In fact, one business publishing organization has played an active role in both this tax litigation and the PRC inquiry.

The Government's theory in American College of Physicians is that (sale of) advertising in a nonprofit-published medical periodical is per se (i) a trade or business, (ii) unrelated to medicine. It therefore triggers application of the UBIT.

The ACP's theory, accepted by the Federal Circuit, (and to a limited extent, by the Supreme Court) is that some advertisements inform the reader of medical news or improvements and therefore advance the scientific and philanthropic aims of the organization. Thus, if a page of the Annals of Internal Medicine contains an ad, it may:

A. Motivate the reader to buy the product described;

OR

B. Inform the reader of the character, function and effect of the product advertised, without motivating him to buy it.

AND IF:

1. The product is a drug or medical device, the possibility of B. being true makes the advertisement related to the aims of the ACP, whereas

2. If the product is a sports car, neither A. nor B., if true, could advance the aims of the ACP.

Hence the need, advocated by ACP and acknowledged by the Federal Circuit, to fragment advertising, sort the ads into "related" and "unrelated" categories, and tax only the revenue from the latter.

The ACP position does not admit that advertising, simply by being advertising, imports unrelatedness. It finds unrelatedness only in the content of individual ads. The Supreme Court rejected this view -- at least in its pure form -- and it is not appropriate for postal application in any case.[1]

Because the UBIT, like any form of income tax, focuses on net income -- the economic stage at which related and unrelated activities are reduced to common (monetary) terms -- it does not logically entail a particular treatment of advertising. For tax purposes, advertising may be treated as a distinct universal.

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[1] It also can be criticized on logical grounds. In the first place, the theory's validity depends on the effect of the ad on a third party. This is notoriously hard to prove. The problem exists because the editorial portion of the magazine -- corresponding to the subscription income the IRS does not pretend to tax -- can hardly have any purpose other than to inform. It is not necessary to justify exemption by showing that one or more doctors in fact gained information from articles in the Annals. ACP's argument about ads, however, requires (someone to prove) that in addition to their obvious purpose of arousing a desire on the reader's part to acquire a bottle of pills, they also in some cases informed a previously ignorant reader of the objective quality and character of the pills described. This is likely to be uncertain and complex to administer (in the postal area, perhaps impossible) -- which, assuming no dispositive legal arguments either way, is a good policy reason for agreeing with the government's simpler theory. The administrative difficulty is also a very real practical problem which we discuss at some length, infra.

Secondly, ACP's theory is a two-edged one. Suppose the Annals contained a column called "Internist on Wheels," dealing with sports cars, which enjoyed great popularity and generated many subscriptions. Under the ACP's individual-content theory and its relatedness criterion, could the IRS assess UBIT on the portion of the subscription income allocable to the sports car column? See Bittker and Rahdert, supra, 85 Yale L. J. at 308. If suitable for advertising, does not the "subfragmentation" ACP advocates also lend itself to editorial matter?

One property we might attach to that universal is unrelatedness. In that case every instance of advertising would be, by definition, an instance of unrelated business activity (the IRS view). Or it may be considered that "advertising" is not an entity; that there are only discrete actions by a nonprofit (publishing articles A, B, C, . . . N; publishing advertisements a, b, c, . . . n) every one of which is examined separately to see if it is "related" (the ACP position, as qualified by the criticism stated above regarding its applicability to editorial matter). Because both articles and advertisements are "converted into income" before they become interesting from the UBIT standpoint, the choice is an open one.

This means that, from the tax point of view, there is nothing logically odd about treating some advertisements as though, to some readers, they were equivalent to articles. This is what ACP and the Federal Circuit did as regards those "related" advertisements that inform internists about new drugs or medical products, with a presumed concomitant benefit to the practice of internal medicine and the American College, itself. To use postal terminology, income tax law neither has nor seems to need an editorial/advertising distinction.

By contrast, the Postal Service has always recognized advertising as a universal and treated it differently from editorial matter. The incidentally (or even predominantly) informative character of a particular advertisement does not allow the publisher to argue that it should be sent at editorial rates.[2]

Unlike the income tax, postal law has long incorporated the editorial/advertising distinction. The history and motives of differential treatment for advertising content are discussed in Complaint of Tri-Parish Journal, Inc. d/b/a River Parishes Sun, PRC Op. C85-2, November 20, 1985 (Tri-Parish), and especially in

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[2] The nonprofit advertising pound rate differs by as much as 56 percent from the regular rate, the closest zones exhibiting the most difference.

Dr. Kielbowicz's testimony. Differential treatment for different kinds of content is a characteristic postal institution, and it therefore makes at least historical sense to examine the basic nature of the components of a periodical: it is motivation to buy, in the case of advertising, and not its incidental informative features, that is central to the differential treatment by the Postal Service. Additionally, unlike the income tax, postal administration does not reduce the different components of a periodical to common monetary (income) terms.

That reasoning tends, as a matter of logic, to support adoption of the government position in American College of Physicians. It is not the only argument in favor of transplanting the IRS view to the postal side; administrability is another.

It is difficult enough to have to sort through the advertising carried by a journal when evaluating the nonprofit publisher's IRS information return once a year. Tax controversy is habitually carried on after the fact, with elaborate mechanisms of refunds and interest to square accounts between the government and the taxpayer -- often long after the taxable year in question.[3] Unlike tax determinations, rating for postage is a repetitive exercise. Each issue of a periodical presents a new problem. Deciding on an immediate, case-by-case basis whether and to what extent the advertising in a periodical was related to the public service mission of the nonprofit mailer would be substantially more demanding than the corresponding tax decision. Rating for postage is carried out in the first instance by the postmaster or an employee at the office of entry. The material must be moved promptly, not only because second-class matter is entitled to preferential treatment but for the operating convenience of the post office. We could look forward to a substantial new category of issues, needing to be settled by costly after-the-fact negotiation or litigious controversy between the Service and nonprofit mailers. Since the necessity for this additional mechanism is created solely by nonprofit second class, its cost should be attributed to that class, thus raising its rates. If it cannot be identified, and thus cannot be attributed, then under current law it would be paid by the very appropriations the PRC has been told to try to reduce.

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[3] Mueller and Massachusetts Medical Society, supra, are examples of tax decisions rendered not only after the taxable year in question, but after the Code itself had been changed.

These administrative and historical concerns are -- in some important respects -- unique to second class. For example, above we cited the preferential treatment which is specific to second class. We also have previously cited the importance of the second- and third-class classifications in terms of these types of issues and their ramifications for arriving at new eligibility criteria for nonprofit mail. We noted that the historical and present content of third-class is predominantly advertising. Thus, unlike the second-class classification and its attendant concern for issues like timeliness, no immediate reasons come to mind -- in the purely postal sense -- for granting preferred status to third-class. At the same time, since most of third class does not contain the delineation in content inherent in second-class (advertising/editorial matter), there also are no immediate or apparent reasons for treating advertising as less preferred in the third-class category. Consequently, we do not propose one rule which defines all advertising (second and third class) as nonpreferred mail. While such a distinction may be logical from a historical and practical perspective for nonprofit second class, the makeup of third class requires a different standard -- although both are drawn from the UBIT. In the following pages we suggest such a standard for third-class. We begin with a discussion of the Third Class Mail Association (TCMA) proposal for a UBIT-type eligibility standard which, we presume, reflects its experience with third class.

VII. Discussion of TCMA's Proposal on the UBIT

Third Class Mail Association (TCMA) recommends a UBIT-type standard to accommodate the needs of both its for-profit and nonprofit members.[1] It believes that a "substantial relation" test would be a sound social and economic standard for the Postal Service, and offers specific suggestions and legislative language to make it workable in the postal system. We review these points below.

TCMA's testimony initially sets out its view of the limits on the Commission's role in this study. It says that the question of whether to maintain revenue foregone appropriations, at all, is a political issue which should be reserved for Congress. It emphasizes the importance (see Tr. 1/91-92) of the Commission's task in recommending new eligibility criteria for allocating institutional costs, in the event Congress eliminates these appropriations.[2]

TCMA identifies some basic goals as parameters to guide the Commission in this task. It states it is important to recognize the social value of nonprofit organizations, and also maintain the integrity of the principle of cost-based rates. It argues, too, that prudent social policy requires a fair allocation of institutional costs: the Postal Service should not be considered as simply a "corporation" making "charitable contributions" (by way of for-profit organizations) in the guise of reduced rates to nonprofits. Comments of TCMA at 4-5.

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[1] See Tr. 1/89. Other parties such as the U.S. Small Business Administration (see letter of Charles A. Caldwell, Deputy Chief Counsel for Advocacy, U.S. Small Business Administration, to Chairman Steiger, filed March 24, 1986) mention the UBIT but do not put forth a concrete proposal using the UBIT as a model, as did TCMA.

[2] TCMA points out that current law "caps" preferred rates at attributable costs so that if authorization for appropriations were ended, without additional legislative modifications, the institutional cost burden would fall on for-profits. Comments of TCMA at 3.

Given these concerns, TCMA finds a strict application of subsection (b)(1) of the Budget Reconciliation Act too broad, and likewise finds deficiencies in the "primary purpose" test occasionally used by the Postal Service. It notes that these tests would either exclude or embrace too wide a range of advertising activities, considering the Congressional intent outlined in the bill. TCMA argues that the primary purpose test, in particular, "lacks sufficient specificity and is incapable of consistent and uniform application." Id. at 8.

TCMA claims that an analogy drawn from the UBIT is the best alternative. It says it provides a test which can be used, at the least, to organize the raw data from the study, and perhaps ultimately as the standard for the new eligibility criteria. In support of a UBIT analogy, TCMA states its view that there is a commonality in the policies behind preferred rates and tax exemptions. According to TCMA, these policies either: (1) recognize the cost avoided by organizations which "perform functions which a compassionate government would otherwise have to perform itself," or (2) protect organizations "engaged in activities which lie close to the core of the democratic process." Id. at 9. TCMA says a UBIT-type test would properly recognize that unrelated activities of nonprofit organizations should not receive government protection or preferred status. As witness Gertz stated: "We think that the focus of the Commission's inquiry should be upon mailings by preferred organizations at the preferred rates which inappropriately advertise goods, products, services . . . and the like. Tr. 1/93 (emphasis in original).

Also in support of a UBIT analogy, TCMA say such a test is more "discriminating" than the alternatives and at the same time "administratively workable." Comments of TCMA at 10 (The administrative issue is discussed in greater detail, infra). Witness Gertz also noted that the UBIT test "has been used for many years in the examination of tax exempt institutions" (Tr. 1/93) which is a distinct advantage when considering new eligibility criteria for nonprofit postal rates.

Applying the UBIT analogy to the Postal Service under TCMA's proposal. TCMA transposes the UBIT to postal terms as follows:

> Any mail matter issued by an organization otherwise holding preferred rate status which is not substantially related (aside from the need of the mailer for income or funds or the use it makes of the proceeds derived) to the exercise or performance by such organization of the function or purpose constituting the basis upon which preferred rate status was authorized is ineligible for mailing at preferred rates.

Comments of TCMA at 6. It says that the actual determination of "substantial relatedness" is accomplished by measuring the "goodness of fit" between the basis for the organization's preferred rate status and the nature of the good or service advertised: "to the extent that the two are 'substantially related', the mailing piece is eligible for preferred rates; if the two are not substantially related, the mailing piece is ineligible." Id. at 10. While recognizing that this determination involves some judgment, TCMA believes it is within sufficiently narrow bounds, and notes that the test has the additional advantage of a cogent rationale. It also points out that the information necessary for applying this standard is readily available.[3]

As we noted above, TCMA offers specific legislation for its proposals. The terms of this proposed legislation can be found at pages (a) and (b) of its prepared comments. As explained by TCMA, the "phasing" provisions of § 3626 are deleted, under its proposal, and the possibility of failure of appropriations is accounted for under a new § 3626(a)(2), rather than under the current § 3627.[4] Under its proposed § 3626(a)(2), rates for nonprofits may be increased to bear their share of institutional costs,[5] in accordance with the terms of a proposed amendment to § 3622(b).

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[3] For example, it says one need only examine the DMM or DMCS for the pertinent provision supplying the basis for the preferred status. Id. at 10 and see Tr. 1/94.

TCMA also proposes to add a new subsection 3622(b)(9), which provides a "substantive standard" for the allocation of institutional costs to nonprofits. TCMA explains that it is a two-part test:

> The first part of the test focuses on the value of mail eligible for preferred rate treatment to the public. This test presupposes that fund raising solicitations may have a different value to recipients than solicitations by commercial mailers to purchase goods or services of a commercial character. It also recognizes that there may be different social values among and between the preferred classes. The second part of the test focuses upon the effective rate changes on organizations eligible for mailing at the preferred rates and may, but is not required to be, applied and measured on the basis of elasticities.

Id. at (c)-(d). During the hearings, witness Gertz stated that TCMA is willing to work with the Commission and the parties in fashioning more precise language; and the matter is discussed in the Commission's Report.

TCMA suggestions for postal administration of a UBIT-type test. We have noted, throughout our discussion of the UBIT, the importance of ease of administration in the postal context, and TCMA also specifically addressed this issue. For instance, witness Gertz testified that a UBIT standard is "relatively simple of application but sufficiently flexible . . . ." Tr. 1/95. In response to questions from the bench, he said:

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[4] TCMA states that the current provision for failure of appropriations falls under § 3626, rather than § 3627. Comments of TCMA at (c). We assume this is a typographical error.

[5] TCMA's proposed § 3626(a)(2) allows the Commission to annualize any such rate increase in the event the failure to appropriate is not known until the new fiscal year. It also allows the Commission to make a downward adjustment of rates if Congress fails to appropriate funds in one year and then decides to appropriate sufficient funds in a succeeding year. Comments of TCMA at (b) and (c).

> I submit to you that the test we have suggested comports with what we think would be the ultimate intent of Congress and possibly less administratively difficult than any of the substitutes that anyone else may suggest as the line for cutting between what an institution may or may not mail.

Id. at 96.

TCMA also submitted separate, written comments addressing various possibilities for administering a UBIT analogy. In that filing, witness Gertz cited ways in which current Postal Service review procedures of nonprofit mailings could be adapted to a UBIT-type test and we briefly review these proposed adaptations, below.

Witness Gertz suggested that mail acceptance and verification clerks, who currently review nonprofit rate mailings for violations of DMM § 623.52 on cooperative mailings, could carry out the additional step of matching the mailing with the purpose behind the grant of nonprofit status, to ensure compliance with the substantial relation test. Letter of TCMA witness Gertz at 1-2. Witness Gertz acknowledged that some additional training for this task might be in order, but concluded that the experience under the UBIT, itself, would provide ample assistance in making these determinations.

Witness Gertz also considered the need to have procedures for appeals of determinations of relatedness. He pointed out that, currently, review of classification decisions begins at the Mail Classification Center (MCC) and proceeds to Postal Service headquarters, if additional review is needed. He suggested another step for appeals of relatedness decisions in the nature of "an Internal Revenue Service (IRS) business advisory opinion on whether the mailing activity is designed to generate related or unrelated business income. With our test, the USPS can still escrow an amount equal to the difference between the regular and nonprofit postal rate until a final judgment has been made." Id. at 2. Witness Gertz cited several advantages to IRS participation in the review process, including self-policing by the nonprofit organization. Id.

Witness Gertz also offered an alternative procedure for willing nonprofit organizations. He suggested that these organizations could voluntarily submit mailings for a Postal Service determination of relatedness prior to presenting the mail for acceptance, thereby averting any difficulties associated with an adverse determination at that stage of the mailing process. According to witness Gertz:

> Most bulk rate mailings are planned and designed weeks, if not months, in advance, and most nonprofit rate mailers can get a classification decision well in advance of their mailing date. In addition, mailers themselves could always seek an IRS business advisory opinion on any activity that they think may be challenged by postal officials.

Id. at 2.

Comments on the proposal of TCMA. It has been advanced that TCMA's proposed "substantial relatedness" test is overly broad and too time consuming for Postal Service purposes: "Acceptance clerks do not have the time or resources to inquire into the 'primary purpose' of a nonprofit organization at the loading dock."[6] To the extent that TCMA proposes to transfer portions of the UBIT rules on relatedness -- almost verbatim -- to the Postal Service (see Comments of TCMA at 6; p. 84, supra) we do not take issue with this comment by the Postmaster General. We believe, however, that TCMA's proposal, and the UBIT, generally, is useful as a model from which we can derive concrete legislative terms and practical operating rules which are susceptible to simple application in the postal system; hence our repeated use of the term "UBIT analogy."

By "simple application" we intend that any published rules would be easy for the mailer to follow and for postal personnel to administer. For example, Indian crafts made by an identifiable Indian population might be readily understood to be "related" under a rule which accords preferred status to "goods made by the subject population." If the rules also were drafted to require the mailer to indicate, in a clear fashion on the face of the mailing, that it has complied with the published standards, then -- by Postmaster General Casey's own standards -- administration by postal personnel also would be simple: "To guard against improper mailings, clerks check whether a sample envelope appears on its face to contain the nonprofit organization's own mail and not that of some other company or organization. This inspection is an objective test which can be performed quickly in busy surroundings."[7] Thus, in the example above, the mailer -- to comply without proposed test -- would design the mailpiece to state prominently that the handicraft items were handmade by the Indian population it serves.

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[6] Letter of Postmaster General Albert V. Casey to Charles L. Clapp at 2, April 18, 1986 (attached as Appendix G, Part Two at p. 2.

We also point out that TCMA was concerned with "mailings . . . which inappropriately advertise." Tr. 1/93; see also p. 83, supra. We agree with TCMA that a major focus of this study, as identified by Congress, is devising alternative ways to treat that type of mailing. We reiterate our belief that the UBIT is useful in this endeavor.

We have stated previously that third class requires a different UBIT-type standard than second class and TCMA's comments are useful in examining the UBIT in this light; that is, its proposed transfer of the UBIT to the Postal Service is helpful as a model. However, given our agreement with the Postmaster General's statement about the importance of workable operating and administrative rules, we find TCMA's proposal somewhat limited from this practical standpoint. The following section describes how a UBIT analogy might be a viable standard for third-class, in light of the specific issues which Congress has asked us to address.

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[7] Letter of Postmaster General Albert J. Casey, April 18, 1986 (Appendix G Part Two at p. 2).

VIII. The UBIT Analogy and Third-Class Nonprofit Mail

Our remaining task, therefore, is to try to specify the principles that should guide the application of the UBIT analogy to the development of working rules for third-class nonprofit mail.

This entails applying the principle that an "article, product, [or] service" be related to the subsidized purpose of the nonprofit organization, otherwise than through the production of income. Treas. Reg. sec. 1.513-1(d). Where the only relationship that appears is that the selling activities finance the eleemosynary activities, this test is not met.

The tax law also requires that the business activity be causally related to the achievement of the eleemosynary purpose if its income is to escape taxation. Treas. Reg. sec. 1.513-1(d)(2). Causal relationship can be manifested, for example, when the eleemosynary function itself generates income through user fees (Treas. Reg. sec. 1.513-1(d)(4)(i)), or when the product of exempt functions is sold without substantial further manufacture by others (sec. 1.513-1(d)(4)(ii)). It is not present where sale of an ordinary commercial article is promoted by associating it with the name or reputation of the nonprofit, thereby "exploiting" the good will built up through its eleemosynary functions. Sec. 1.513-1(d)(4)(iv). In that case -- exemplified by the sale of chinaware or athletic clothes bearing a university seal -- we might say that the eleemosynary function causes the commercial one to succeed -- rather than the other way around.

The concept of a causal relationship may even illuminate the puzzling case of a nonprofit, organized to help a particular beneficiary group, which buys and resells to the group members an article useful to them under the description of beneficiaries (example: an orthopedic medicine organization offers braces, walkers, etc., to persons with physical handicaps). If we assume such articles are available on the market as well, then the causal connection between the activity of advertising and selling the product and the achievement of the purpose of having patients suitably equipped with the product is, at best, contingent[1].

This case requires analytical treatment, because it is one where we might depart from tax practice. As Treas. Reg. sec. 1.513-1(d)(4)(i), Ex. 2, indicates, income from the sales just described would probably not be taxed. But we established above that arguments from competitive unfairness are more cogent in the postal context than in income tax theory. While there are doubts regarding the effectiveness of an income tax exemption as a condition, or cause, of pricecutting by an exempt supplier, there is no reason to doubt that reduction of an input cost like postage will be passed on when the user is acting in a competitive manner.[2]

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[1] An example may make the distinction clearer. Suppose that an organization's purpose is to bring it about that poor persons have shoes, and that to this end it collects contributions from donors. Starting with the donated funds, it could either: (i) buy shoes and distribute them to the beneficiary group, or (ii) distribute to them vouchers for the purchase of shoes, after arranging with merchants for the redemption of the vouchers from its donated funds. In principle, at least, the result is the same. The example shows that (at least where there is a market that could supply the needed goods or services) it is not always necessary for a charitable organization, which intends that the disadvantaged have a particular good, to supply it directly.

[2] It is also the case that reductions in input cost will be passed on when the sales activity is considered by the nonprofit to have a substantive (not merely income-producing) connection with its charitable mission. This behavior -- while not consciously competitive -- may have the same effect as economic pricecutting. If the function of a sales program is merely to raise funds for eleemosynary purposes, then a reduction in postage is perhaps unlikely to be passed on; the saving will go to increase net income available for charitable ends. On the other hand, when the nonprofit intends to distribute a product as cheaply as possible to a beneficiary group, the saving is likely to be passed on (either through a lower unit price or through supplying more units at the same total cost). Thus, when the (still noncausal) connection between the sales activity and the charitable mission is closer, the risk to competition "on a level playing field" may also increase. A pair of examples may illustrate this: (i) A college raises funds by selling sweatshirts with the college seal, at a substantially higher price than a functionally comparable sweatshirt would bring on

Fn. Cont'd.

All this suggests that we should frame rules with the aim of admitting advertising mail to the preferred category if and only if the activity of distributing the product (as opposed to just the result of distributing it) has an independent causal relation to the achievement of the eleemosynary purpose.

Analysis of this kind should work for both products and services, though with the caveat that at times the service will be identical with the eleemosynary function (*e.g.*, education courses that are both "service" and "education"). In the strict sense, the terms of an identity relation cannot stand in a causal relation to one another (not being logically independent); but the purpose of adopting causal relationship as the normal test is self-evidently served by treating the identity cases as though they met it.

One other general problem should be borne in mind when considering eligibility rules for advertising mail. Because we are doing so in large measure because of competition problems, we must consider the limits of the competitive sector. The cases for which we need rules are those in which the cost advantage given a nonprofit seller by subsidized postal rates can translate into a competitive edge over a for-profit seller of similar goods.

It does not follow that every case of preemption or a possible for-profit sale of a good or service is a case of unfair competition. When a nonprofit uses a product to elicit a donation much in excess of its value, or gives away a product (obtained in many cases with donated funds) to a beneficiary, it

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the market. As we suggestd above, the person who buys it has motives other than purely economic ones: he wants to donate to the college as well as acquire a sweatshirt. Within limits, it is in the college's interest to "overprice" its goods. (ii) A charity buys shoes to resell to poor persons at the less-than-market prices it believes they can afford. Its purpose is to provide as many poor persons as it can with shoes, so it will - again within reasonable limits -- do best by "underpricing" its goods. But the activity of selling shoes is more closely (though still not causally) related to the charity's mission than the activity of selling sweatshirts is to the college's.

is not competing in any economically intelligible sense. In the first case, the donor is not, or not wholly, in the competitive marketplace so far as obtaining the product is concerned. In the second case, the recipient is by definition[3] not able to obtain the product or service at the market price. This implies that our objectives, at least so far as competition for sales of a product is concerned, do not require exclusion of the product when offered free as an inducement for a donation. Equally, they may not require exclusion of announcements to beneficiaries that a product will be distributed free -- though it is far from clear that such mail exists in any substantial volume.

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[3] This formulation assumes that gifts or sales at nominal prices are made only to those who cannot afford the article at a commercial (cost + normal return) price. This assumption that there will be no, or negligible, "cheating" is admittedly a simplification -- like most assumptions about efficiency of economic mechanisms. In any case, it is not clear that postal administration could take on the task of insuring its validity in practice.

ATTACHMENT A
Part One

Part One of this Attachment contains the most recent Amendments to 26 U.S.C. §§ 511, 512 and 513. The Amendments occasionally refer to the unamended text of these sections, which we have attached as Part Two of the Attachment.

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1969 Amendment. Pub.L. 91-172, Title I, §§ 101(a), 121(d)(3)(C), Dec. 30, 1969, 83 Stat. 492, 548, substituted "Part III" for "Part II" as the Part designation and substituted "Unrelated debt-financed income" for "Business leases" in item 514.

§ 511. Imposition of tax on unrelated business income of charitable, etc., organizations

(a) Charitable, etc., organizations taxable at corporation rates.—

(1) Imposition of tax.—There is hereby imposed for each taxable year on the unrelated business taxable income (as defined in section 512) of every organization described in paragraph (2) a tax computed as provided in section 11. In making such computation for purposes of this section, the term "taxable income" as used in section 11 shall be read as "unrelated business taxable income".

(2) Organizations subject to tax.—

(A) Organizations described in sections 401(a) and 501(c).—The tax imposed by paragraph (1) shall apply in the case of any organization (other than a trust described in subsection (b) or an organization described in section 501(c)(1)) which is exempt, except as provided in this part or part II (relating to private foundations), from taxation under this subtitle by reason of section 501(a).

(B) State colleges and universities.—The tax imposed by paragraph (1) shall apply in the case of any college or university which is an agency or instrumentality of any government or any political subdivision thereof, or which is owned or operated by a government or any political subdivision thereof, or by any agency or instrumentality of one or more governments or political subdivisions. Such tax shall also apply in the case of any corporation wholly owned by one or more such colleges or universities.

(b) Tax on charitable, etc., trusts.—

(1) Imposition of tax.—There is hereby imposed for each taxable year on the unrelated business taxable income of every trust described in paragraph (2) a tax computed as provided in section 1(e). In making such computation for purposes of this section, the term "taxable income" as used in section 1 shall be read as "unrelated business taxable income" as defined in section 512.

(2) Charitable, etc., trusts subject to tax.—The tax imposed by paragraph (1) shall apply in the case of any trust which is exempt, except as provided in this part or part II (relating to private foundations), from taxation under this subtitle by reason of section 501(a) and which, if it were not for such exemption, would be subject to subchapter J (sec. 641 and following, relating to estates, trusts, beneficiaries, and decedents).

(c) Special rule for section 501(c)(2) corporations.—If a corporation described in section 501(c)(2)—

(1) pays any amount of its net income for a taxable year to an organization exempt from taxation under section 501(a) (or which would pay such an amount but for the fact that the expenses of collecting its income exceed its income), and

(2) such corporation and such organization file a consolidated return for the taxable year,

such corporation shall be treated, for purposes of the tax imposed by subsection (a), as being organized and operated for the same purposes as such organization, in addition to the purposes described in section 501(c)(2).

(d) Tax preferences.—

(1) Organizations taxable at corporate rates.—If an organization is subject to tax on unrelated business taxable income pursuant to subsection (a), the tax imposed by section 56 shall apply to such organizations with respect to items of tax preference which enter into the computation of unrelated business taxable income in the same manner as section 56 applies to corporations.

(2) Organizations taxable as trusts.—If an organization is subject to tax on unrelated business taxable income pursuant to subsection (b), the taxes imposed by section 55 shall apply to such organization with respect to items of tax

preference which enter into the computation of unrelated business taxable income.

(As amended Dec. 30, 1969, Pub.L. 91–172, Title I, § 121(a)(1)–(3), Title III, § 301(b)(8), Title VIII, § 803(d)(2), 83 Stat. 536, 585, 684; May 23, 1977, Pub.L. 95–30, Title I, § 101(d)(6), 91 Stat. 133; Nov. 6, 1978, Pub.L. 95–600, Title III, § 301(b)(5), Title IV, § 421(e)(3), 92 Stat. 2821, 2876; Sept. 3, 1982, Pub.L. 97–248, Title II, § 201(c)(5), 96 Stat. 419; Sept. 3, 1982, Pub.L. 97–248, Title II, § 201(d)(5), formerly § 201(c)(5), renumbered Jan. 12, 1983, Pub.L. 97–448, Title III, § 306(a)(1)(A)(1), 96 Stat. 2400.)

1982 Amendment. Subsec. (d)(2). Pub.L. 97–248, § 201(c)(5), substituted "section 55" for "section 55 and section 56 (as the case may be)"

1978 Amendment. Subsec. (a)(1). Pub.L. 95–600, § 301(b)(5)(A), substituted "a tax" for "a normal tax and a surtax".

Subsec. (a)(2). Pub.L. 95–600, § 301(b)(5)(B), substituted "tax" for "taxes" wherever appearing.

Subsec. (d). Pub.L. 95–600, § 421(e)(3), substituted provisions relating to organizations taxable at corporate rates and organizations taxable as trusts, for provisions relating to imposition of the tax imposed by section 56 of this title to an organization subject to tax under this section for tax preferences computed in unrelated business taxable income.

1977 Amendment. Subsec. (b)(1). Pub.L. 95–30 substituted "section 1(e)" for "section 1(d)".

1969 Amendment. Subsec. (a)(2)(A). Pub.L. 91–172, § 121(a)(1), removed reference, in subpar. catchline, to pars. (2), (3), (5), (6), (14)(B), (C), and (17) of section 501(c) of this title, and, in text, struck out the exemptions to churches, conventions, or associations of churches, from the imposition of tax on their unrelated business income, made corporations organized under section 501(c)(1) of this title (i.e. organized under Acts of Congress), exempt from such tax, but made all such exemptions subservient to the exceptions in part II and section 501(a) of this title.

Subsec. (b)(1). Pub.L. 91–172, § 803(d)(2), substituted section 1(d) for section 1 in the reference to the section under which the computation of the tax dealing with the imposition of tax on the unrelated business taxable income of trusts is computed.

Subsec. (b)(2). Pub.L. 91–172, § 121(a)(2), pluralized the word "trust" in par. catchline, and, in text, made the imposition of tax on the unrelated business income of exempt trusts subject to the provisions of part II, and, for the purposes of determining trusts exempt from taxation, substituted reference to section 501(a) for reference to "section 501(c)(3) or (17) or section 401(a)"

Subsec. (c). Pub.L. 91–172, § 121(a)(3), added subsec. (c). Former subsec. (c), covering the effective date, was stricken.

Subsec. (d). Pub.L. 91–172, § 301(b)(8), added subsec. (d).

Effective Date of 1982 Amendment. Amendment by Pub.L. 97–248 to apply to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub.L. 97–248, set out as a note under section 55 of this title.

Effective Date of 1978 Amendment. Amendment of subsec. (a)(1), (2) of this section by section 301(b)(5)(A), (B) of Pub.L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub.L. 95–600, set out as a note under section 11 of this title.

Amendment of subsec. (d) of this section by section 421(e)(3) of Pub.L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub.L. 95–600, set out as a note under section 55 of this title.

Effective Date of 1978 Amendment. Amendment by Pub.L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub.L. 95–30, set out as a note under section 1 of this title.

Effective Date of 1969 Amendment. Section 121(g) of Pub.L. 91–172 provided that: "The amendments made by this section [amending this section, and sections 48, 501, 502, 503, 512, 513, 514, 681, 801, 810, 1443, 1504 and 7605 of this title] (other than by subsections (b)(3) and (e) [enacting sections 277 and 6050 of this title]) shall apply to taxable years beginning after December 31, 1969. The amendments made by subsection (b)(3) [enacting section 277 of this title] shall apply to taxable years beginning after December 31, 1970. The amendments made by subsection (e) [enacting section 6050 of this title] shall apply with respect to transfers of property after December 31, 1969. Where an organization makes a bargain purchase of property before October 9, 1969, which is subject to a mortgage which was placed on the property more than 5 years before the purchase, and the organization paid the seller a total amount no greater than the amount of the seller's cost (including attorneys' fees) directly related to the transfer of such property to the organization (but in any event no more than 10 percent of the value of the seller's equity in the property), the indebtedness secured by such mortgage shall not be treated, notwithstanding the amendments made by subsection (d)(1) [amending section 514 of this title], as acquisition indebtedness for purposes of section 514(c)(1) [section 514(c)(1) of this title] of the Internal Revenue Code of 1954 [this title] during a period of 10 years following the date of the transaction."

Amendment of subsec. (b)(1) of this section by section 803(4)(2) of Pub.L. 91–172, applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub.L. 91–172, set out as a note under section 1 of this title.

Subsec. (d) of this section applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub.L. 91–172, set out as a note under section 56 of this title.

Legislative History. For legislative history and purpose of Pub.L. 91–172, see 1969 U.S. Code Cong. and Adm. News, pp. 1645, 1692, 1901, 1902, 2096, 2404. See, also Pub.L. 95–30, 1977 U.S. Code Cong. and Adm. News, p. 185; Pub.L. 95–600, 1978 U.S. Code Cong. and Adm. News, p. 6761; Pub.L. 97–248, 1982 U.S. Code Cong.

competitive advantage from its tax-exempt status and indicating that it was not operated as trade or business. Veterans of Foreign Wars of U.S. v. U.S., D.C.Mo.1984, 601 F.Supp. 7.

Information returns filed by plaintiff exempt organization fully disclosing excess funds received from reserve account and net collections on defaulted notes, describing such funds as income, and including complete audit reports of certified public accountants who prepared the returns expressing uncertainty regarding the income tax status of such receipts were filed in good faith and disclosed sufficient facts upon which liability for the tax on unrelated business taxable income could be determined so as to start running of period of limitations on such assessment. San Antonio Dist. Dental Soc. v. U.S., D.C.Tex.1972, 340 F.Supp. 11.

Where taxpayer, trustee of qualified profit-sharing plan, purchased securities on margin for trust account for sole benefit of plan participants and their beneficiaries, Court determined that securities were debt-financed property within meaning of section 514(b) of this title and that debt-financed portion of income and gain from securities was taxable under this section, as unrelated business income, considering statutory language, legislative history, and fact that securities were held only to produce income and not in furtherance of exempt purposes or functions. Elliot Knitwear Profit Sharing Plan v. C.I.R., 1979, 71 T.C. 765.

8. Question of fact

What is or is not a trade or business within meaning of this section and section 512 of this title relating to taxing of unrelated business income of tax exempt organizations is basically a question of fact and common sense dictates that the conducting of a trade or business requires some business activity beyond mere receipt of profits. Louis W. and Maud Hill Family Foundation v. U.S., D.C.Minn.1972, 347 F.Supp. 1225.

9. Congressional opinion

Opinion of the 1969 Congress as to the validity of Internal Revenue Service regulations as an interpretation of this subchapter was entitled to little or no weight. Massachusetts Medical Soc. v. U.S., C.A.Mass.1975, 514 F.2d 153.

10. Rates imposed

Where, in 1973 and 1974, taxpayer, section 401(a) qualified profit-sharing trust tax exempt under section 501(a) of this title, purchased shopping center with purchase-money mortgage from third party and funds transferred by corporate founder Tax Court determined taxpayer was taxable under this section. Marprowear Profit-Sharing Trust v. C.I.R., 1980, 74 T.C. 1086.

11. Contribution or loan

Where, in 1973 and 1974, taxpayer, section 401(a) qualified profit-sharing trust tax exempt under section 501(a) of this title, purchased shopping center with purchase-money mortgage from third party and funds transferred by corporate founder. Tax Court determined transfer was loan and not advance contribution, since both taxpayer and corporation treated it as loan and no evidence to contrary was produced. Marprowear Profit-Sharing Trust v. C.I.R., 1980, 74 T.C. 1086.

12. Rebate of premiums

Payments received by tax exempt credit union league from insurer could not be characterized as nontaxable rebate of premiums, where the league's contracts with the insurer indicated that such payments were made by virtue of the league's endorsement and marketing activities on the insurer's behalf and where the league made no distribution of the payments to individual credit union policyholders; rather, the payments were income in the hands of the league. Louisiana Credit Union League v. U. S., C.A.La.1982, 693 F.2d 525.

§ 512. Unrelated business taxable income

(a) Definition.—For purposes of this title—

(1) General rule.—Except as otherwise provided in this subsection, the term "unrelated business taxable income" means the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in subsection (b).

(2) Special rule for foreign organizations.—In the case of an organization described in section 511 which is a foreign organization, the unrelated business taxable income shall be—

(A) its unrelated business taxable income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, plus

(B) its unrelated business taxable income which is effectively connected with the conduct of a trade or business within the United States.

(3) Special rules applicable to organizations described in paragraph (7), (9), (17), or (20) of section 501(c).—

(A) General rule.—In the case of an organization described in paragraph (7), (9), (17), or (20) of section 501(c), the term "unrelated business taxable income" means the gross income (excluding any exempt function income), less the deductions allowed by this chapter which are directly connected with the production of the gross income (excluding exempt function income), both computed with the modifications provided in paragraphs (6), (10), (11), and (12) of subsection (b). For purposes of the preceding sentence, the deductions provided by sections 243, 244, and 245 (relating to dividends received by corporations) shall be treated as not directly connected with the production of gross income.

(B) Exempt function income.—For purposes of subparagraph (A), the term "exempt function income" means the gross income from dues, fees, charges, or similar amounts paid by members of the organization as consideration for providing such members or their dependents or guests goods, facilities, or services in furtherance of the purposes constituting the basis for the exemption of the organization to which such income is paid. Such term also means all income (other than an amount equal to the gross income derived from any unrelated trade or business regularly carried on by such organization computed as if the organization were subject to paragraph (1)), which is set aside—

(i) for a purpose specified in section 170(c)(4), or

(ii) in the case of an organization described in paragraph (9), (17), or (20) of section 501(c), provide for the payment of life, sick, accident, or other benefits,

including reasonable costs of administration directly connected with a purpose described in clause (i) or (ii). If during the taxable year, an amount which is attributable to income so set aside is used for a purpose other than that described in clause (i) or (ii), such amount shall be included, under subparagraph (A), in unrelated business taxable income for the taxable year.

(C) Applicability to certain corporation described in section 501(c)(2).—In the case of a corporation described in section 501(c)(2), the income of which is payable to an organization described in paragraph (7), (9), (17), or (20) of section 501(c), subparagraph (A) shall apply as if such corporation were the organization to which the income is payable. For purposes of the preceding sentence, such corporation shall be treated as having exempt function income for a taxable year only if it files a consolidated return with such organization for such year.

(D) Nonrecognition of gain.—If property used directly in the performance of the exempt function of an organization described in paragraph (7), (9), (17), or (20) of section 501(c) is sold by such organization, and within a period beginning 1 year before the date of such sale, and ending 3 years after such date, other property is purchased and used by such organization directly in the performance of its exempt function, gain (if any) from such sale shall be recognized only to the extent that such organization's sales price of the old property exceeds the organization's cost of purchasing the other property. For purposes of this subparagraph, the destruction in whole or in part, theft, seizure, requisition, or condemnation of property, shall be treated as the sale of such property, and rules similar to the rules provided by subsections (b), (c), (e), and (j) of section 1034 shall apply.

(E) Limitation on amount of setaside in the case of organizations described in paragraph (9), (17), or (20) of section 501(c).—

(i) In general.—In the case of any organization described in paragraph (9), (17), or (20) of section 501(c), a set-aside for any purpose specified in clause (ii) of subparagraph (B) may be taken into account under subparagraph (B) only to the extent that such set-aside does not result in an amount of assets set aside for such purpose in excess of the account limit determined under section 419A(c) for the taxable year (not taking into account any reserve described in section 419A(c)(2)(A) for post-retirement medical benefits).

(ii) No set aside for facilities.—No set aside for assets used in the provision of benefits described in clause (ii) of subparagraph (B) shall be taken into account.

(iii) Treatment of existing reserves for post-retirement medical or life insurance benefits.—

(I) Clause (i) shall not apply to any income attributable to a[1] existing reserve for post-retirement medical or life insurance benefits.

(II) For purposes of subclause (I), the term "existing reserve or post-retirement medical or life insurance benefit" means the amount of assets set aside as of the close of the last plan year ending before the date of the enactment of the Tax Reform Act of 1984 for purposes of post-retirement medical benefits or life insurance benefits to be provided to covered employees.

(III) All payments during plan years ending on or after the date of the enactment of the Tax Reform Act of 1984 of post-retirement medical benefits or life insurance benefits shall be charged against the reserve referred to in subclause (II). Except to the extent provided in regulations prescribed by the Secretary, all plans of an employer shall be treated as 1 plan for purposes of the preceding sentence.

(iv) **Treatment of tax exempt organizations.**—This paragraph shall not apply to any organization if substantially all of the contributions to such organization are made by employers who were exempt from tax under this chapter throughout the 5-taxable year period ending with the taxable year in which the contributions are made.

(4) **Special rule applicable to organizations described in section 501(c)(19).**—In the case of an organization described in section 501(c)(19), the term "unrelated business taxable income" does not include any amount attributable to payments for life, sick, accident, or health insurance with respect to members of such organizations or their dependents which is set aside for the purpose of providing for the payment of insurance benefits or for a purpose specified in section 170(c)(4). If an amount set aside under the preceding sentence is used during the taxable year for a purpose other than a purpose described in the preceding sentence, such amount shall be included, under paragraph (1), in unrelated business taxable income for the taxable year.

(5) **Definition of payments with respect to securities loans.**—

(A) The term "payments with respect to securities loans" includes all amounts received in respect of a security (as defined in section 1236(c)) transferred by the owner to another person in a transaction to which section 1058 applies (whether or not title to the security remains in the name of the lender) including—

(i) amounts in respect of dividends, interest, or other distributions,

(ii) fees computed by reference to the period beginning with the transfer of securities by the owner and ending with the transfer of identical securities back to the transferor by the transferee and the fair market value of the security during such period,

(iii) income from collateral security for such loan, and

(iv) income from the investment of collateral security.

(B) Subparagraph (A) shall apply only with respect to securities transferred pursuant to an agreement between the transferor and the transferee which provides for—

(i) reasonable procedures to implement the obligation of the transferee to furnish to the transferor, for each business day during such period, collateral with a fair market value not less than the fair market value of the security at the close of business on the preceding business day,

(ii) termination of the loan by the transferor upon notice of not more than 5 business days, and

(iii) return to the transferor of securities identical to the transferred securities upon termination of the loan.

(b) **Modifications.**—The modifications referred to in subsection (a) are the following:

(1) There shall be excluded all dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and annuities, and all deductions directly connected with such income.

[See main volume for text of (2)]

(3) In the case of rents—

(A) Except as provided in subparagraph (B), there shall be excluded—

(i) all rents from real property (including property described in section 1245(a)(3)(C)), and

(ii) all rents from personal property (including for purposes of this paragraph as personal property any property described in section 1245(a)(3)(B)) leased with such real property, if the rents attributable to such personal property are an incidental amount of the total rents received or accrued under the lease, determined at the time the personal property is placed in service.

(B) Subparagraph (A) shall not apply—

(i) if more than 50 percent of the total rent received or accrued under the lease is attributable to personal property described in subparagraph (A)(ii), or

(ii) if the determination of the amount of such rent depends in whole or in part on the income or profits derived by any person from the property leased (other than an amount based on a fixed percentage or percentages of receipts or sales).

(C) There shall be excluded all deductions directly connected with rents excluded under subparagraph (A).

(4) Notwithstanding paragraph (1), (2), (3), or (5), in the case of debt-financed property (as defined in section 514) there shall be included, as an item of gross income derived from an unrelated trade or business, the amount ascertained under section 514(a)(1), and there shall be allowed, as a deduction, the amount ascertained under section 514(a)(2).

(5) There shall be excluded all gains or losses from the sale, exchange, or other disposition of property other than—

(A) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, or

(B) property held primarily for sale to customers in the ordinary course of the trade or business.

There shall also be excluded all gains on the lapse or termination of options, written by the organization in connection with its investment activities, to buy or sell securities (as defined in section 1236(c)).

This paragraph shall not apply with respect to the cutting of timber which is considered, on the application of section 631, as a sale or exchange of such timber.

[See main volume for text of (6) to (9)]

(10) In the case of any organization described in section 511(a), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), but shall not exceed 10 percent of the unrelated business taxable income computed without the benefit of this paragraph.

[See main volume for text of (11)]

(12) Except for purposes of computing the net operating loss under section 172 and paragraph (6), there shall be allowed a specific deduction of $1,000. In the case of a diocese, province of a religious order, or a convention or association of churches, there shall also be allowed, with respect to each parish, individual church, district, or other local unit, a specific deduction equal to the lower of—

(A) $1,000, or

(B) the gross income derived from any unrelated trade or business regularly carried on by such local unit.

(13) Notwithstanding paragraphs (1), (2), or (3), amounts of interest, annuities, royalties, and rents derived from any organization (in this paragraph called the "controlled organization") of which the organization deriving such amounts (in this paragraph called the "controlling organization") has control (as defined in section 368(c)) shall be included as an item of gross income (whether or not the activity from which such amounts are derived represents a trade or business or is regularly carried on) in an amount which bears the same ratio as—

(A)(i) in the case of a controlled organization which is not exempt from taxation under section 501(a), the excess of the amount of taxable income of the controlled organization over the amount of such organization's taxable income which if derived directly by the controlling organization would not be unrelated business taxable income, or

(ii) in the case of a controlled organization which is exempt from taxation under section 501(a), the amount of unrelated business taxable income of the controlled organization, bears to

(B) the taxable income of the controlled organization (determined in the case of a controlled organization to which subparagraph (A)(ii) applies as if it were not an organization exempt from taxation under section 501(a)), but not less than the amount determined in clause (i) or (ii), as the case may be, of subparagraph (A),

both amounts computed without regard to amounts paid directly or indirectly to the controlling organization. There shall be allowed all deductions directly connected with amounts included in gross income under the preceding sentence.

(14) Except as provided in paragraph (4), in the case of a church, or convention or association of churches, for taxable years beginning before January 1, 1976, there shall be excluded all gross income derived from a trade or business and all deductions directly connected with the carrying on of such trade or business if such trade or business was carried on by such organization or its predecessor before May 27, 1969.

(15) Except as provided in paragraph (4), in the case of a trade or business—

(A) which consists of providing services under license issued by a Federal regulatory agency,

(B) which is carried on by a religious order or by an educational organization described in section 170(b)(1)(A)(ii) maintained by such religious order, and which was so carried on before May 27, 1959, and

(C) less than 10 percent of the net income of which for each taxable year is used for activities which are not related to the purpose constituting the basis for the religious order's exemption,

there shall be excluded all gross income derived from such trade or business and all deductions directly connected with the carrying on of such trade or business, so long as it is established to the satisfaction of the Secretary that the rates or other charges for such services are competitive with rates or other charges charged for similar services by persons not exempt from taxation.

[See main volume for text of (c)]

(As amended Dec. 30, 1969, Pub.L. 91-172, Title I, § 121(b)(1), (2), 83 Stat. 537, 538; Aug. 29, 1972, Pub.L. 92-418, § 1(b), 86 Stat. 656; Sept. 3, 1976, Pub.L. 94-396, § 1(a), 90 Stat. 1201; Oct. 4, 1976, Pub.L. 94-455, Title XIX, §§ 1901(b)(8)(F), 1906(b)(13)(A), 1951(b)(8)(A), 90 Stat. 1794, 1834, 1839; Oct. 20, 1976, Pub.L. 94-568, § 1(b), 90 Stat. 2697; Aug. 15, 1978, Pub.L. 95-345, § 2(a)(2), (b), 92 Stat. 481; Jan. 12, 1983, Pub.L. 97-448, Title I, § 102(m)(3), 96 Stat. 2374; July 18, 1984, Pub.L. 98-369, Title V, § 511(b), 98 Stat. 860.)

[1] So in original. Probably should be "an".

References in Text. The date of enactment of the Tax Reform Act of 1984, referred to in subsec. (a)(3)(E)(iii)(II) and (III), is the date of enactment of subdivision B of Pub.L. 98-369, which was approved July 18, 1984.

1984 Amendment. Subsec. (a)(3). Pub.L. 98-369, § 511(b), (1)(A), substituted in catchline and subpar. (A) "paragraph (7), (9), (17), or (20) of section 501(c)" for "section 501(c)(7) or (9)"

Pub.L. 98-369, § 511(b)(1)(B), substituted in subpar. (B)(ii) "paragraph (9), (17), or (20) of section 501(c)" for "section 501(c)(9)".

Pub.L. 98-369, § 511(b)(1)(A), substituted in subpars. (C) and (D) "paragraph (7), (9), (17), or (20) of section 501(c)" for "section 501(c)(7) or (9)".

Subsec. (a)(3)(E). Pub.L. 98-369, § 511(b)(2), added subpar. (E).

1983 Amendment. Subsec. (b)(10). Pub.L. 97-448 substituted "10 percent" for "5 percent".

1978 Amendment. Subsec. (a)(5). Pub.L. 95-345, § 2(b), added subsec. (a)(5).

Subsec. (b)(1). Pub.L. 95-345, § 2(a)(2), added provisions relating to payments with respect to securities loans.

1976 Amendments. Subsec. (a)(3)(A). Pub.L. 94-568 provided that for purposes of the general rule, the deductions provided by sections 243, 244, and 245 (relating to dividends received by corporations) shall be treated as not directly connected with the production of gross income.

Subsec. (b). Pub.L. 94-455, § 1906(b)(13)(A), struck out "or his delegate" following "Secretary".

Subsec. (b)(5). Pub.L. 94-396 added provision relating to exclusion of gains on the lapse or termination of options to buy or sell securities.

Subsec. (b)(13). Pub.L. 94-455, § 1951(b)(8)(A), struck out pars. (13) and (14) relating to exceptions, additions, and limitations applicable in determining unrelated business taxable income, and redesignated pars. (15), (16), and (17) as pars. (13), (14), and (15), respectively.

Where taxpayer trade association was exempt from tax as business league, consisted of 49 employer maritime shipping companies, had exempt purpose of promoting harmony with unions in Port of Baltimore, performed administrative services for its members, such as recording hours worked for its members by individual longshoremen, and charged its members fees, based on size of their hourly payrolls, Tax Court determined fees taxpayer received from its administrative services, relative to vacation pay and guaranteed annual income accounts (established under industry collective bargaining agreement), were unrelated business income, under this section, since fees were paid in proportion to services rendered, and for services essentially commercial in nature. Steamship Trade Association of Baltimore, Inc. v. C.I.R., 1983, 81 T.C. 303.

Where taxpayer civic league, exempt from income taxation, collected unpaid taxes on behalf of its member municipalities, in exchange for percentage of amounts collected, Tax Court determined income league derived from its collection activity did not constitute unrelated business taxable income, within meaning of subsec. (a)(1) of this section, since league's collection activities were substantially related to accomplishment of its exempt purpose. Kentucky Municipal League v. C.I.R., 1983, 81 T.C. 156.

Where taxpayer, exempt social club, owned replica of private ship used annually to stage mock invasion of Tampa, Florida, which was followed by parade from which taxpayer received percentage of net receipts from concession rights to provide seating and refreshments, as well as percentage from sale of logbook with advertising therein, and taxpayer established special fund to maintain ship moored to dock for rest of year for public viewing, Tax Court determined (1) under subsec. (a)(3)(A) of this section, gross income received from concessions and sales of logbooks was unrelated business taxable income, (2) expenses of staging invasion and parade were not "directly connected with the production" of income from concessions and sale of logbooks within meaning of subsec. (a)(3)(A) of this section, and were not deductible in computing unrelated business taxable income, and (3) income earned by special ship fund did not constitute exempt function income within meaning of subsec. (a)(3)(B) of this section, since taxpayer failed to prove such income was set aside for charitable or educational purpose. Ye Mystic Krewe of Gasparilla v. C.I.R., 1983, 80 T.C. 755.

Where taxpayers, qualified profit-sharing trusts, held limited partnership interests in several partnerships engaged in wholesale fastener distribution business, Tax Court rejected taxpayers' contention that a limited partnership interest is a passive investment and determined, considering language and legislative history of subsec. (c) of this section and section 513(b) of this title, taxpayers realized "unrelated business taxable income" within meaning of this section from their distributive shares of income from such partnerships. Service Bolt & Nut Co. Profit Sharing Trust v. C.I.R., 1982, 78 T.C. 812.

Where taxpayer, a tax-exempt organization, conducted professional vaudeville show as annual fund-raising activity in 1974, 1975, and 1976, Tax Court determined income was not subject to tax as unrelated business taxable income, since, considering regulations, legislative purpose, and all facts and circumstances, vaudeville shows (and accompanying program guides) were intermittent activities which did not constitute an unrelated trade or business which was "regularly carried on." Suffolk County Patrolmen's Benevolent Association, Inc. v. C.I.R., 1981, 77 T.C. 1314.

6. Questions for jury

Inasmuch as reasonable men might conclude that agreement between farmer and bank which owned farm as trustee for charitable trust was a management contract so that income from farm was taxable unrelated business income, or might conclude that the agreement was a lease and the payments were tax exempt rent, jury question was presented. State Nat. Bank of El Paso v. U.S., C.A.Tex.1975, 509 F.2d 832.

7. Regularity of trade or business

Since each research project conducted for private sponsors was a discrete activity taking place over a discrete period of time, not a continuing, repetitive operation, individual projects did not possess the continuity necessary to be comparable to a commercial venture conducted by a nonexempt organization; however, designation of all research projects conducted for private sponsors as trade or business in issue satisfied the "regularly carried-on" requirement of this section. Midwest Research Institute v. U.S., D.C.Mo.1983, 554 F.Supp. 1379, affirmed 744 F.2d 635.

8. Advertising revenues

In view of fact that advertising in medical journal published by medical organization was substantially related to organization's tax exempt educational purpose, income earned by organization from sales of advertising space was not taxable. American College of Physicians v. U.S., C.A.Fed.1984, 743 F.2d 1570, certiorari granted 105 S.Ct. 3524, 87 L.Ed.2d 649.

§ 513. Unrelated trade or business

(a) General rule.—The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function described in section 501(c)(3)), except that such term does not include any trade or business—

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) which is carried on, in the case of an organization described in section 501(c)(3) or in the case of a college or university described in section 511(a)(2)(B), by the organization primarily for the convenience of its members, students, patients, officers, or employees, or, in the case of a local association of employees described in section 501(c)(4) organized before May 27, 1969, which is the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or

[See main volume for text of (a)(3) and (b)]

(c) **Advertising, etc., activities.**—For purposes of this section, the term "trade or business" includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

(d) **Certain activities of trade shows, state fairs, etc.**—

(1) **General rule.**—The term "unrelated trade or business" does not include qualified public entertainment activities of an organization described in paragraph (2)(C), or qualified convention and trade show activities of an organization described in paragraph (3)(C).

(2) **Qualified public entertainment activities.**—For purposes of this subsection—

(A) **Public entertainment activity.**—The term "public entertainment activity" means any entertainment or recreational activity of a kind traditionally conducted at fairs or expositions promoting agricultural and educational purposes, including, but not limited to, any activity one of the purposes of which is to attract the public to fairs or expositions or to promote the breeding of animals or the development of products or equipment.

(B) **Qualified public entertainment activity.**—The term "qualified public entertainment activity" means a public entertainment activity which is conducted by a qualifying organization described in subparagraph (C) in—

(i) conjunction with an international, national, State, regional, or local fair or exposition,

(ii) accordance with the provisions of State law which permit the activity to be operated or conducted solely by such an organization, or by an agency, instrumentality, or political subdivision of such State, or

(iii) accordance with the provisions of State law which permit such an organization to be granted a license to conduct not more than 20 days of such activity on payment to the State of a lower percentage of the revenue from such licensed activity than the State requires from organizations not described in section 501(c)(3), (4), or (5).

(C) **Qualifying organization.**—For purposes of this paragraph, the term "qualifying organization" means an organization which is described in section 501(c)(3), (4), or (5) which regularly conducts, as one of its substantial exempt purposes, an agricultural and educational fair or exposition.

(3) **Qualified convention and trade show activities.**—

(A) **Convention and trade show activity.**—The term "convention and trade show activity" means any activity of a kind traditionally conducted at conventions, annual meetings, or trade shows, including, but not limited to, any activity one of the purposes of which is to attract persons in an industry generally (without regard to membership in the sponsoring organization) as well as members of the public to the show for the purpose of displaying industry products or to stimulate interest in, and demand for, industry products or services, or to educate persons engaged in the industry in the development of new products and services or new rules and regulations affecting the industry.

(B) **Qualified convention and trade show activity.**—The term "qualified convention and trade show activity" means a convention and trade show activity carried out by a qualifying organization described in subparagraph (C) in conjunction with an international, national, State, regional, or local convention, annual meeting, or show conducted by an organization described in subparagraph (C) if one of the purposes of such organization in sponsoring the activity is the promotion and stimulation of interest in, and demand for, the products and services of that industry in general, and the show is designed to achieve such purpose through the character of the exhibits and the extent of the industry products displayed.

(C) **Qualifying organization.**—For purposes of this paragraph, the term "qualifying organization" means an organization described in section 501(c) (5) or (6) which regularly conducts as one of its substantial exempt purposes a show which stimulates interest in, and demand for, the products of a particular industry or segment of such industry.

(4) **Such activities not to affect exempt status.**—An organization described in section 501(c)(3), (4), or (5) shall not be considered as not entitled to the exemption allowed under section 501(a) solely because of qualified public entertainment activities conducted by it.

(e) **Certain hospital services.**—In the case of a hospital described in section 170(b)(1)(A)(iii), the term "unrelated trade or business" does not include the furnishing of one or more of the services described in section 501(e)(1)(A) to one or more hospitals described in section 170(b)(1)(A)(iii) if—

(1) such services are furnished solely to such hospitals which have facilities to serve not more than 100 inpatients;

(2) such services, if performed on its own behalf by the recipient hospital, would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption; and

(3) such services are provided at a fee or cost which does not exceed the actual cost of providing such services, such cost including straight line depreciation and a reasonable amount for return on capital goods used to provide such services.

(f) **Certain bingo games.**—

(1) **In general.**—The term "unrelated trade or business" does not include any trade or business which consists of conducting bingo games.

(2) **Bingo game defined.**—For purposes of paragraph (1) the term "bingo game" means any game of bingo—

(A) of a type in which usually—

(i) the wagers are placed,

(ii) the winners are determined, and

(iii) the distribution of prizes or other property is made,

in the presence of all persons placing wagers in such game,

(B) the conducting of which is not an activity ordinarily carried out on a commercial basis, and

(C) the conducting of which does not violate any State or local law.

(g) **Certain pole rentals.**—In the case of a mutual or cooperative telephone or electric company, the term "unrelated trade or business" does not include engaging in qualified pole rentals (as defined in section 501(c)(12)(D)).

(As amended Dec. 30, 1969, Pub.L. 91-172, Title I, § 121(b)(4), (c), 83 Stat. 541, 542; Oct. 4, 1976, Pub.L. 94-455, Title XIII, §§ 1305(a), 1311(a), 90 Stat. 1716, 1729; Oct. 21, 1978, Pub.L. 95-502, Title III, § 301(a), 92 Stat. 1702; Dec. 28, 1980, Pub.L. 96-605, Title I, § 105(b), 94 Stat. 3524.)

1980 Amendment. Subsec. (g). Pub.L. 96-605 added subsec. (g).

1978 Amendment. Subsec. (f). Pub.L. 95-502 added subsec. (f).

1976 Amendment. Subsec. (d). Pub.L. 94-455, § 1305(a), added subsec. (d).

Subsec. (e). Pub.L. 94-455, § 1311(a), added subsec. (e).

1969 Amendment. Subsec. (a)(2). Pub.L. 91-172, § 121(b)(4), added reference to local associations of employees described in section 501(c)(4) of this title and organized before May 27, 1969.

Subsec. (c). Pub.L. 91-172, § 121(c), substituted "Advertising, etc., activities" for "Special rule for certain publishing businesses", in subsec. catchline, and, in text, substituted provisions expanding the definition of trade or business to include any activity carried on for the production of income from the sale of goods or the performance of services, for provisions referring to publishing businesses carried on by an organization during a taxable year beginning before Jan. 1, 1951.

Effective Date of 1980 Amendment. Section 106(c)(2) of Pub.L. 96-605 provided that: "The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1969."

Effective Date of 1978 Amendment. Section 301(b) of Pub.L. 95-502 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969."

Effective Date of 1976 Amendment. Section 1305(b) of Pub.L. 94-455 provided that: "The amendments made by subsection (a) [enacting subsec. (d) of this section] apply to qualified public entertainment activities in taxable years beginning after December 31, 1962, and to qualified convention and trade show activities in taxable years beginning after the date of enactment of this Act [Oct. 4, 1976]."

Section 1311(b) of Pub.L. 94-455 provided that: "The amendment made by this section [enacting subsec. (e) of this section] shall apply to all taxable years to which the Internal Revenue Code of 1954 applies."

Effective Date of 1969 Amendment. Amendment of section by section 121(c) of Pub.L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub.L. 91-172, set out as a note under section 511 of this title.

Conducting of Certain Games of Chance Not Treated as Unrelated Trade or Business. Pub.L. 98-369, Title III, § 311, July 18, 1984, 98 Stat. 786, provided that:

"(a) General rule.—For purposes of section 513 of the Internal Revenue Code of 1954 [this section] (defining unrelated trade or business), the term 'unrelated trade or business' does not include any trade or business which consists of conducting any game of chance if—

"(1) such game of chance is conducted by a nonprofit organization,

"(2) the conducting of such game by such organization does not violate any State or local law, and

"(3) as of October 5, 1983—

"(A) there was a State law in effect which permitted the conducting of such game of chance by such nonprofit organization, but

"(B) the conducting of such game of chance by organizations which were not nonprofit organizations would have violated such law.

"(b) Effective date.—Subsection (a) shall apply to games of chance conducted after June 30, 1981, in taxable years ending after such date."

Legislative History. For legislative history and purpose of Pub.L. 91-172, see 1969 U.S. Code Cong. and Adm. News, pp. 1645, 1672, 1905, 2104, 2405. See, also, Pub.L. 94-455, 1976 U.S. Code Cong. and Adm. News, p. 1555; Pub.L. 95-502, 1978 U.S. Code Cong. and Adm. News, p. 3716; Pub.L. 96-605, 1980 U.S. Code Cong. and Adm. News, p. 7293.

West's Federal Practice Manual

Unrelated business income, see § 427.

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½. Purpose

Purpose of this section was to tax commercial enterprises operated by charitable organizations on same basis as their taxpaying competitors, regardless of whether such enterprises were operated directly as divisions of charitable organizations, or operated indirectly as separate incorporated feeders. Iowa State University of Science and Technology v. U.S., 1974, 500 F.2d 508, 205 Ct.Cl. 339.

¾. Rules and regulations

Treasury regulations establishing test for determining whether trade or business is "substantially related" to purpose for which organization is granted tax exemption were wholly consistent with congressional intent in enacting revenue statute on the subject. Carle Foundation v. U.S., C.A.Ill.1979, 611 F.2d 1192, certiorari denied 101 S.Ct. 85, 449 U.S. 824, 66 L.Ed.2d 27.

1. Trade or business activity

Administration of insurance plan did not constitute "unrelated" trade or business to which unrelated business tax applied, where charitable organization merely received experience dividends which its members allowed it to keep; said organization's accumulation of funds was not result of commercial exchange, and, therefore, dividends did not constitute profit within meaning of section. American Bar Endowment v. U.S., C.A.Fed. 1985, 761 F.2d 1573, [illegible]

Where business league solicited bids from companies whose products and services would be endorsed and actively promoted among its members, performed [illegible] services incidental to operation of those products and services, and absent proper split of insurance premiums different company would have been selected, business league's motive for offering insurance policies was one of profit sufficient to support finding that premiums it received were from trade or business for purposes of unrelated business tax income. Professional Ins. Agents of Michigan v. C.I.R., C.A.6, 1984, 726 F.2d 1097.

Activity is a "trade or business," within meaning of sections 511 and 512 of this title and this section imposing a tax on unrelated trade or business income of tax-exempt organizations, if the tax-exempt organization conducts it for the production of income from the performance of services. Carolina Farm & Power Equipment Dealers Ass'n, Inc. v. U.S., C.A.N.C.1983, 699 F.2d 167.

To determine whether a tax-exempt organization is carrying on a trade or business for unrelated business income tax purposes, the court must look to see whether that institution is engaged in extensive activity over a substantial period of time with the intent to earn a profit. Louisiana Credit Union League v. U. S., C.A.La.1982, 693 F.2d 525.

Requirements which must be met for any net income received by taxpayer to constitute unrelated business taxable income are that income must arise from trade or business, trade or business must be regularly carried on, and trade or business must not be substantially related, aside from need of such organization for income or funds or use it makes of profits derived, to the organization's exempt purpose. Disabled American Veterans v. U.S., Ct.Cl.1981, 650 F.2d 1178.

Mere inclusion of card reorder form in each package mailed did not convert tax-exempt school's solicitation of contributions through mailing of greeting cards to potential contributors into unrelated business, so that proceeds from solicitations were taxable, where recipients were under no obligation to give any money whatsoever. Hope School v. U.S., C.A.Ill.1980, 612 F.2d 298.

Where foundation which was composed of hospital and pharmacy rented out office space within its complex to private clinic run by doctors who engaged in practice of medicine on a for-profit basis, and where, with the exception of a small courtesy staff, hospital was staffed entirely by doctors from the clinic, hospital and clinic shared some physical facilities, equipment, and services, and clinic patients who required hospitalization were admitted to hospital, but clinic and hospital were distinct legal entities, sales from tax-exempt hospital pharmacy to clinic and its private patients were not exempt from unrelated business tax as "primarily for the convenience" of foundation's hospital patients. Carle Foundation v. U.S., C.A.Ill.1979, 611 F.2d 1192, certiorari denied 101 S.Ct. 85, 449 U.S. 824, 66 L.Ed.2d 27.

Tax on unrelated business income was not limited to income earned by trade or business that operated in competition with taxpaying entities. Clarence LaBelle Post No. 217, Veterans of Foreign Wars of U.S. v. U.S., C.A.Minn.1978, 580 F.2d 270, certiorari dismissed 99 S.Ct. 712, 439 U.S. 1040, 58 L.Ed.2d 716.

On balance, despite its educational activities, facts surrounding operation of state university owned television station, which was operated generally as a commercial station in competition with two other commercial stations, required holding that television revenues constituted unrelated business income to university within this section. Iowa State University of Science and Technolog[illegible] v. U.S., 1974, 500 F.2d 508, 205 Ct.Cl. 33[illegible]

Presence of an income tax exemption for [illegible] versity does not automatically exempt all activi[illegible] in which it may participate and, income [illegible] to an educational institution exempt from [illegible] under this section is taxable if [illegible] by [illegible]

Activities of credit union league in [illegible] insurance policies sold by one insurer, provid[illegible] collection services offered by adjustment [illegible] and entering into data processing contracts w[illegible] several member unions constituted a "trade [illegible] business" within meaning of this section. Lou[illegible] ana Credit Union League v. U.S., D.C.La.19[illegible], 501 F.Supp. 934, affirmed 693 F.2d 525.

Generally, for an activity of a tax-exempt or[illegible] nization to be taxable as generating "unrel[illegible] business taxable income," the activity must consti[illegible] tute a trade or business, be regularly carried o[illegible] be unrelated to the exempt purpose of the org[illegible] nization, and not be done for the convenience [illegible] the organization's members, students, patients, [illegible] ficers or employees. St. Luke's Hospital of Ka[illegible] sas City v. U.S., D.C.Mo.1980, 494 F.Supp. [illegible]

Activity of corporate taxpayer, an exempt orga[illegible] nization, in providing pathology services for fo[illegible] hospitals and numerous private physicians consti[illegible] tuted a "trade or business" substantially related [illegible] educational purposes for which it was granted [illegible] exemption so as to qualify it for an exemptio[illegible] from tax on "unrelated business income," no[illegible] withstanding claim that pathology testing busines[illegible] rather than fundamental research for medical edu[illegible] cational program was principal purpose of activi[illegible] ty, where much of research and training given b[illegible] taxpayer was aimed at learning and teaching diag[illegible] nostic techniques, and, in order to do this, huma[illegible] tissue and specimens were required. Anatomi[illegible] Lineal 1948, Inc. v. U.S., D.C.Ark.1973, 36[illegible] F.Supp. 11[illegible]

Uncompensated work performed by charitable foundation, when compared with compensated work of employed clerical help and part-time promotional agent, qualified as "substantially all the work" performed in connection with production and sale of foundation's records, for purposes of this section imposing tax on unrelated business income of charitable foundations and providing that term unrelated business does not include any business in which substantially all work in carrying on such business is performed for organization without compensation, where the uncompensated work was essence of entire endeavor. Greene County Medical Soc. Foundation v. U.S., D.C.Mo.1972, 345 F.Supp. 900.

In order for income of tax exempt organization to be "unrelated business taxable income" income must be derived from an activity which is a trade or business, the trade or business must not be substantially related to the exempt purposes of the organization and the exempt organization must regularly carry on the trade or business. Oklahoma Cattlemen's Ass'n v. U.S., D.C.Okl.1969, 310 F.Supp. 320.

Where tax exempt cattlemen's association merely granted insurance company which serviced association's group insurance programs continuing access to membership file association sent out one letter regarding the insurance, permitted insurance obligatory to use association name and insignia on literature sent to association members and furnished, correspondence concerning insurance, association was not engaged in "trade" or "business" within this section and sections 501 and 512 of this title pertaining to taxation on unrelated business income of exempt organization. Id.

Taxpayer, corporation exempt from Federal income taxation under section 501(c)(4) of this title was subject to tax on unrelated business income from weekly bingo games open to public under sections 511 and 512 of this title, since its bingo operation was trade or business under this section even though only a "game" under Minnesota law, and such trade or business was regularly carried on and was not substantially related to taxpayer's performance of its exempt functions; moreover, taxpayer did not fall within exception to definition of unrelated trade or business contained in subsec. (a)(1) of this section, since individuals handling bingo operations were compensated. Smith-Dodd Businessman's Association, Inc. v. C.I.R., 1975, 65 T.C. 620.

1. Retroactive effect

Congress, by providing that 1978 amendment, which was to effect that bingo games were not subject to unrelated business income tax, was to be retroactive to tax years beginning after Dec. 31, 1969, intended to correct an inconsistency in treatment of income from bingo games which had occurred in 1970 through 1978. Pup Tent No. 14 Military Order of the Cootie, of the U.S. v. U.S., D.C.Minn.1982, 542 F.Supp. 1375.

2. Substantially related to exempt purpose

Retention of portion of assessment for administering vacation pay and guaranteed annual income accounts for members which employed longshoremen was not substantially related to tax-exempt business league's exempt functions of contract negotiation and labor dispute arbitration and, thus, rendered league liable for a tax on the retained amounts, where primary beneficiaries of league's activity were those members who took advantage of the administrative service, members were the only ones eligible to participate in the administrative service, and administrative service could have been performed by for-profit entities. Steamship Trade Ass'n of Baltimore, Inc. v. C.I.R., C.A.4, 1985, 757 F.2d 1494.

Rebates received by tax-exempt trade association from insurer providing group coverage to participating members of the association constituted unrelated business taxable income, where the association consistently received more in rebates than it expended in providing insurance services and the association's insurance services advanced primarily the interests of the participating members and thus was not related to the association's charitable purpose. Carolinas Farm & Power Equipment Dealers Ass'n, Inc. v. U.S., C.A.N.C. 1983, 699 F.2d 167.

For a substantial relationship to exist between the activities of a business league and its tax-exempt function, any direct benefits flowing from the league's activities must inure to its members in their capacities as members of the organization. Louisiana Credit Union League v. U. S., C.A.La. 1982, 693 F.2d 525.

Business dealings between exempt hospital and nonexempt but closely related clinic are not necessarily related to tax-exempt purpose of hospital. Carle Foundation v. U.S., C.A.Ill.1979, 611 F.2d 1192, certiorari denied 101 S.Ct. 85, 449 U.S. 824, 66 L.Ed.2d 27.

Pharmaceutical sales by tax-exempt hospital pharmacy to nonexempt private clinic and clinic's private patients were not substantially related to any of the stated exempt purposes of foundation which was composed of hospital and hospital pharmacy. Id.

Profits of charitable corporation from advertising in its educational journal did not constitute taxable income of an unrelated trade or business. Massachusetts Medical Soc. v. U.S., C.A.Mass. 1975, 514 F.2d 153.

Nonprofit corporation's involvement in making health insurance available to its members did not constitute an unrelated trade or business so as to be subject to taxation; furthermore, even if nonprofit corporation was involved in an unrelated trade or business, those activities were substantially related to the exempt purpose of the corporation, to promote improved business conditions and general welfare of independent retail distributors of farm and power equipment and to procure group insurance benefits which would not otherwise have been available to its members, and therefore was not subject to taxation. Carolina Farm & Power Equipment Dealers Ass'n, Inc. v. U.S., D.C.N.C.1982, 541 F.Supp. 86.

Since activities of credit union league in endorsing one insurer, promoting debt collection services of one adjustment bureau and providing data processing services to member credit unions was related to the league's purpose, primarily, if not entirely, by virtue of its bringing in money which helped the league operate, such activities were not "substantially related" to exercise of the league's tax-exempt functions where league collected and kept rebates from insurer, only certain members received benefits from debt collection and data processing and such were not inherently ones for the common interest of the entire league membership. Louisiana Credit Union League v. U.S., D.C.La.1980, 501 F.Supp. 934, affirmed 693 F.2d 525.

Certain outside pathology tests, the specimens for which were for the most part obtained from hospital staff physicians who had their offices across the street from hospital, and which were performed and interpreted by pathology department of the hospital, were substantially related to the hospital's performance of functions which provided the basis of the hospital's tax exempt status; the activity clearly contributed to the hospital's teaching function and, also, performing and interpreting the tests was primarily for the convenience of physicians on the hospital staff; thus, income derived from the outside pathology tests was not taxable as "unrelated business income." St. Luke's Hospital of Kansas City v. U.S., D.C.Mo. 1980, 494 F.Supp. 85.

An exempt organization may carry on a business or activity which competes with other businesses without subjecting itself to taxation so long as business is substantially related to exempt purpose of organization. Anateus Lineal 1948, Inc. v. U.S., D.C.Ark.1973, 366 F.Supp. 118.

3. Evidence

On issue of determination of purposes of business for income tax purposes, profits, although not conclusive, are at least some evidence that business purpose is primary. Iowa State University of Science and Technology v. U.S., 1974, 500 F.2d 508, 205 Ct.Cl. 339.

4. Findings

Two factual elements are critical to finding of necessary substantial relationship between business league's activities and its purposes: unique nature of activities vis-a-vis organizational function; and capacity in which benefits are received by organization's members. Professional Ins. Agents of Michigan v. C.I.R., C.A.6, 1984, 726 F.2d 1097.

On determination of purposes of business for purposes of income tax, record supported findings of large profits, substantial accumulations of income, and relatively small amounts of actual exempt activity, with respect to manner in which university conducted operations of its wholly owned television station. Iowa State University of Science and Technology v. U.S., 1974, 500 F.2d 508, 205 Ct.Cl. 339.

5. Matters considered

Profits, or maximization of revenue, is not controlling basis for determination of whether unrelated business tax provisions of Internal Revenue Code apply to fund raising program of tax exempt charitable organization, but rather, source and character of funds is also considered; disagreeing with *Louisiana Credit Union League v. United States,* 693 F.2d 525. American Bar Endowment v. U.S., C.A.Fed.1985, 761 F.2d 1573.

For unrelated business income tax purposes, two factual elements are critical in finding the necessary substantial relationship between a tax-exempt business league's activities and its purposes: the unique nature of the activities vis-a-vis the organizational function, and the capacity in which benefits are received by the organization's members. Louisiana Credit Union League v. U.S., C.A.La.1982, 693 F.2d 525.

Unfair competition is not only factor to be considered in applying unrelated business tax, but unfair competition is primary consideration. Hope School v. U.S., C.A.Ill.1980, 612 F.2d 298.

Government unsuccessfully contended that for income of tax-exempt school from its solicitation of contributions through mailing of greeting cars to potential contributors to be tax-exempt, as not constituting income from unrelated business, distribution of greeting cards must meet tests articulated in cases defining "gifts" for income tax purposes as property transfer made in spirit of "detached and disinterested generosity" and not made with expectation of economic benefit, since government's contention would completely emasculate exception in regulation for "low cost articles incidental to the solicitation of charitable contributions." Id.

Elimination of unfair competition is not the sole factor to be weighed in determining whether given activity is to be taxed as an unrelated trade or business of a tax-exempt organization, but elimination of unfair competition is a very important consideration. Carle Foundation v. U.S., C.A.Ill. 1979, 611 F.2d 1192, certiorari denied 101 S.Ct. 85, 449 U.S. 824, 66 L.Ed.2d 27.

Fact that net profits from commercial operations of television station which was wholly owned by state university were ultimately destined for educational uses of university was irrelevant on issue of exemption for income tax purposes. Iowa State University of Science and Technology v. U.S., 1974, 500 F.2d 508, 205 Ct.Cl. 339.

Effect of this section was to abandon preexisting doctrine that destination of income was more important than its source, and, thereafter, source of income was the important consideration in determining exemption for income tax purposes. Id.

On issue of determination of purposes of business for income tax purposes, of great importance is manner in which enterprise is conducted, and a profitable operation may be justified by factors which, on balance, show that conduct of business was substantially related to exempt purpose of institution. Id.

Evidence of profits alone is not controlling on issue as to whether a nonprofit organization is involved in an unrelated trade or business subject to taxation. Carolina Farm & Power Equipment Dealers Ass'n, Inc. v. U.S., D.C.N.C.1982, 541 F.Supp. 86.

Even if competition with taxable entities were a prerequisite to taxation of unrelated business income of an otherwise tax-exempt business league, credit union league's active endorsement of one insurer and debt collection agency and its rendition of data processing services to member unions would likely involve it in the competitive market place more than sufficiently for invocation of the tax. Louisiana Credit Union League v. U.S., D.C.La.1980, 501 F.Supp. 934, affirmed 693 F.2d 525.

6. Combinations

It is impermissible to combine commercial and noncommercial facilities as one trade or business for purposes of provision of this section for income taxation of income from unrelated trade or business of an exempt institution. Iowa State University of Science and Technology v. U.S., 1974, 500 F.2d 508, 205 Ct.Cl. 339.

7. Review

For purposes of this part, facts of each case, as determined by court below, must be examined closely before labelling activity as trade or business, and while trier of fact must determine what activities of taxpayer are, appellate courts must determine, as matter of law, whether those activities constitute trade or business; that is, whether taxpayer's activities constitute "trade or business" is open for determination by appellate courts unfettered by findings and rulings below. Hope School v. U.S., C.A.Ill.1980, 612 F.2d 298.

8. Members of organization

Income received by qualified exempt profit-sharing trusts from their limited partnership interests was "unrelated business taxable income"; though the exempt trusts were not actively engaged in the partnership activities, they were, nonetheless, "members" of the partnership for purposes of subsec. (b) of this section and section 512(c) of this title. Service Bolt & Nut Co. v. C.I.R., C.A.6, 1983, 724 F.2d 519.

In respect to this section which excludes from the unrelated trade or business income tax any activity of a tax-exempt organization carried on primarily for its members' convenience, "members" refers to any group of persons limited in size who are closely associated with the entity involved and who are necessary to the achievement of the organization's purposes. St. Luke's Hospital of Kansas City v. U.S., D.C.Mo.1980, 494 F.Supp. 85.

9. Limitations

This section, under which 1978 amendment, to effect that bingo games were not subject to unrelated business income tax, was to be retroactively applicable to tax years beginning after Dec. 31, 1969, did not waive the statute of limitations on refund claims or provide a new period of limitations. Pup Tent No. 14 Military Order of the Cootie of the U.S. v. U.S., D.C.Minn.1982, 542 F.Supp. 1375.

10. Compensation

Tax-exempt business league was engaged in an "unrelated trade or business" by administering vacation pay and guaranteed annual income accounts for its members which employed longshoremen and, thus, was liable for tax on retained amounts in those accounts, where league received considerable financial benefits from its administrative service as shown by fact that fees retained by league from amounts paid to the accounts by its members were substantially in excess of the amount league received from members' dues. Steamship Trade Ass'n of Baltimore, Inc. v. C.I.R., C.A.4, 1985, 757 F.2d 1494.

Whether nonmonetary "payment" equals "compensation" so as to exempt from taxation proceeds of bingo games performed by uncompensated personnel is to be decided on facts of particular case, but cost of free beverages consumed, averaging approximately $2.22 per worker, per night, or about 63 cents an hour, was not within definition of "compensation" under this section. Waco Lodge No. 166, Benev. & Protective Order of Elks v. C. I. R., C.A.5, 1983, 696 F.2d 372.

514. Unrelated debt-financed income

(a) Unrelated debt-financed income and deductions.—In computing under section 512 the unrelated business taxable income for any taxable year—

(1) Percentage of income taken into account.—There shall be included with respect to each debt-financed property as an item of gross income derived from an unrelated trade or business an amount which is the same percentage (but not in excess of 100 percent) of the total gross income derived during the taxable year from or on account of such property as (A) the average acquisition indebtedness (as defined in subsection (c)(7)) for the taxable year with respect to the property is of (B) the average amount (determined under regulations prescribed by the Secretary) of the adjusted basis of such property during the period it is held by the organization during such taxable year.

(2) Percentage of deductions taken into account.—There shall be allowed as a deduction with respect to each debt-financed property an amount determined by applying (except as provided in the last sentence of this paragraph) the percentage derived under paragraph (1) to the sum determined under paragraph (3). The percentage derived under this paragraph shall not be applied with respect to the deduction of any capital loss resulting from the carryback or carryover of net capital losses under section 1212.

(3) Deductions allowable.—The sum referred to in paragraph (2) is the sum of the deductions under this chapter which are directly connected with the debt-financed property or the income therefrom, except that if the debt-financed property is of a character which is subject to the allowance for depreciation provided in section 167, the allowance shall be computed only by use of the straight-line method.

(b) Definition of debt-financed property.—

(1) In general.—For purposes of this section, the term "debt-financed property" means any property which is held to produce income and with respect to which there is an acquisition indebtedness (as defined in subsection (c)) at any time during the taxable year (or, if the property was disposed of during the taxable year, with respect to which there was an acquisition indebtedness at any time during the 12-month period ending with the date of such disposition), except that such term does not include—

(A)(i) any property substantially all the use of which is substantially related (aside from the need of the organization for income or funds) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function designated in section 501(c)(3)), or (ii) any property to which clause (i) does not apply, to the extent that its use is so substantially related;

ATTACHMENT A
Part Two

The following pages are the unamended text of 26 U.S.C. §§ 511, 512 and 513.

payers in other cited cases, as foundation contended, since that was year in which material change in activities occurred. Stevens Bros. Foundation, Inc. v. C. I. R., 1962, 39 T.C. 93, affirmed in part, reversed and remanded in part on other grounds 324 F.2d 633, certiorari denied 84 S.Ct. 1135, 376 U.S. 969, 12 L.Ed.2d 84, rehearing denied 84 S.Ct. 1179, 377 U.S. 930, 12 L.Ed.2d 189.

PART II—TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

Sec.
511. Imposition of tax on unrelated business income of charitable etc., organizations.
512. Unrelated business taxable income.
513. Unrelated trade or business.
514. Business leases.
515. Taxes of foreign countries and possessions of the United States.

Cross References

Organization considered as exempt from income taxes for purpose of any law referring thereto, notwithstanding its taxability under this part, see section 501 of this title.

§ 511. Imposition of tax on unrelated business income of charitable, etc., organizations

(a) **Charitable, etc., organizations taxable at corporation rates.**—

(1) **Imposition of tax.**—There is hereby imposed for each taxable year on the unrelated business taxable income (as defined in section 512) of every organization described in paragraph (2) a normal tax and a surtax computed as provided in section 11. In making such computation for purposes of this section, the term "taxable income" as used in section 11 shall be read as "unrelated business taxable income".

(2) **Organizations subject to tax.**—

(A) **Organizations described in section 501(c) (2), (3), (5), (6), (14) (B) or (C), and (17) and section 401(a).**—The taxes imposed by paragraph (1) shall apply in the case of any organization (other than a church, a convention or association of churches, or a trust described in subsection (b)) which is exempt, except as provided in this part, from taxation under this subtitle by reason of section 401(a) or of paragraph (3), (5), (6), (14) (B) or (C), or (17) of section 501(c). Such taxes shall also apply in the case of a corporation described in section 501(c) (2) if the income is payable to an organization which itself is subject to the taxes imposed by paragraph (1) or to a church or to a convention or association of churches.

(B) State colleges and universities.—The taxes imposed by paragraph (1) shall apply in the case of any college or university which is an agency or instrumentality of any government or any political subdivision thereof, or which is owned or operated by a government or any political subdivision thereof, or by any agency or instrumentality of one or more governments or political subdivisions. Such taxes shall also apply in the case of any corporation wholly owned by one or more such colleges or universities.

(b) **Tax on charitable, etc., trusts.—**

(1) **Imposition of tax.**—There is hereby imposed for each taxable year on the unrelated business taxable income of every trust described in paragraph (2) a tax computed as provided in section 1. In making such computation for purposes of this section, the term "taxable income" as used in section 1 shall be read as "unrelated business taxable income" as defined in section 512.

(2) **Charitable, etc., trust subject to tax.**—The tax imposed by paragraph (1) shall apply in the case of any trust which is exempt, except as provided in this part, from taxation under this subtitle by reason of section 501(c) (3) or (17) or section 401 (a) and which, if it were not for such exemption, would be subject to subchapter J (sec. 641 and following, relating to estates, trusts, beneficiaries, and decedents).

(c) Effective date.—The tax imposed by this section shall apply, in the case of a trust described in section 401(a), only for taxable years beginning after June 30, 1954. Aug. 16, 1954, c. 736, 68A Stat. 169; July 14, 1960, Pub.L. 86–667, § 3, 74 Stat. 535; Feb. 2, 1966, Pub.L. 89–352, § 2, 80 Stat. 4.

Historical Note

1939 Internal Revenue Code. Similar provisions to this section were contained in section 421(a), (b) of the 1939 Internal Revenue Code.

1966 Amendment. Subsec. (a) (2) (A). Pub.L. 89-352 inserted "(14) (B) or (C)," after "(6)," in the heading and in the text.

1960 Amendment. Subsec. (a) (2). Pub. L. 86-667, § 3(a), included organizations described in section 501(c) (17) within subpar. (A).

Subsec. (b). Pub.L. 86-667, § 3(b), inserted a reference to section 501(c) (17).

Effective Date of 1966 Amendment. Section 3 of Pub.L. 89-352 provided in part that: "The amendment made by section 2 [amending subsec. (a) (2) (A) of this section] shall apply to taxable years beginning after the date of the enactment of this Act [Feb. 2, 1966]."

Effective Date of 1960 Amendment. Amendment of section by Pub.L. 86-667 applicable to taxable years beginning after Dec. 31, 1959, see section 6 of Pub. L. 86-667, set out as a note under section 501 of this title.

Text of Revenue Acts. Complete original text of Revenue Acts 1924 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History. For a comprehensive analysis of this section as contained in House Report No. 1337, Senate Report No. 1622, and Conference Report No. 2543, which accompanied the Internal Revenue Code of 1954, see pp. 4300, 4951, 5280, respectively, of the 1954 U.S.Code Cong. and Adm.News. See, also, Pub.L. 86-667, 1960 U.S.Code Cong. and Adm.News, p. 3203; Pub.L. 89-352, 1966 U.S.Code Cong. and Adm.News, p. 1853.

Federal Tax Regulations. For administrative regulations under the Internal Revenue Code, see U.S.Code Cong. and Adm.News.

ed from annual "bowl" football game was not "unrelated business income" within this section taxing it in such case, where conducting of bowl game was integral part of association's civic and educational program, and bore close and intimate relationship to civic and educational objectives for which association had been organized. Mobile Arts & Sports Ass'n, Inc. v. U. S., D.C.Ala.1957, 148 F.Supp. 311

7. Evidence

Evidence in tax refund case supported finding that income received by exempt foundation from corporations of which it was controlling stockholder was received from overriding royalties and thus excluded from category of unrelated business taxable income. U. S. v. Robert A. Welch Foundation, C.A.Tex.1964, 334 F.2d 774.

Rules governing members of religious order, and their interpretation of rules, were admissible in action by corporation composed of members of the order to recover income taxes on unrelated business income. De La Salle Institute v. U. S., D.C.Cal.1961, 195 F.Supp. 891.

Evidence of missionary activities carried out by religious order, as distinct from nonprofit corporation composed of members of order, was admissible in corporation's action to recover, on ground of claimed church exemption, income taxes paid on unrelated business income. Id.

Unpublished Internal Revenue Service ruling relating to tax exemption accorded university operated by religious society was admissible in action by nonprofit corporation composed of members of different religious order to recover taxes paid on unrelated business income. Id.

§ 512. Unrelated business taxable income

(a) Definition.—The term "unrelated business taxable income" means the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business, both computed with the exceptions, additions, and limitations provided in subsection (b). In the case of an organization described in section 511 which is a foreign organization, the unrelated business taxable income shall be its unrelated business taxable income which is effectively connected with the conduct of a trade or business within the United States.

(b) Exceptions, additions, and limitations.—The exceptions, additions, and limitations applicable in determining unrelated business taxable income are the following:

(1) There shall be excluded all dividends, interest, and annuities, and all deductions directly connected with such income.

(2) There shall be excluded all royalties (including overriding royalties) whether measured by production or by gross or taxable income from the property, and all deductions directly connected with such income.

(3) There shall be excluded all rents from real property (including personal property leased with the real property), and all deductions directly connected with such rents.

(4) Notwithstanding paragraph (3), in the case of a business lease (as defined in section 514) there shall be included, as an item of gross income derived from an unrelated trade or business, the amount ascertained under section 514(a) (1), and there

shall be allowed, as a deduction, the amount ascertained under section 514(a) (2).

(5) There shall be excluded all gains or losses from the sale, exchange, or other disposition of property other than—

(A) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, or

(B) property held primarily for sale to customers in the ordinary course of the trade or business.

This paragraph shall not apply with respect to the cutting of timber which is considered, on the application of section 631, as a sale or exchange of such timber.

(6) The net operating loss deduction provided in section 172 shall be allowed, except that—

(A) the net operating loss for any taxable year, the amount of the net operating loss carryback or carryover to any taxable year, and the net operating loss deduction for any taxable year shall be determined under section 172 without taking into account any amount of income or deduction which is excluded under this part in computing the unrelated business taxable income; and

(B) the terms "preceding taxable year" and "preceding taxable years" as used in section 172 shall not include any taxable year for which the organization was not subject to the provisions of this part.

(7) There shall be excluded all income derived from research for (A) the United States, or any of its agencies or instrumentalities, or (B) any State or political subdivision thereof; and there shall be excluded all deductions directly connected with such income.

(8) In the case of a college, university, or hospital, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(9) In the case of an organization operated primarily for purposes of carrying on fundamental research the results of which are freely available to the general public, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(10) In the case of any organization described in section 511 (a), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), but shall not exceed 5 percent of the unrelated business taxable income computed without the benefit of this paragraph.

(11) In the case of any trust described in section 511(b), the deduction allowed by section 170 (relating to charitable etc. con-

tributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), and for such purpose a distribution made by the trust to a beneficiary described in section 170 shall be considered as a gift or contribution. The deduction allowed by this paragraph shall be allowed with the limitations prescribed in section 170(b) (1) (A) and (B) determined with reference to the unrelated business taxable income computed without the benefit of this paragraph (in lieu of with reference to adjusted gross income).

(12) There shall be allowed a specific deduction of $1,000.

(13) In the case of a trust—

(A) created by virtue of the provisions of the will of an individual who died after August 16, 1954, and before January 1, 1957,

(B) which, by virtue of the provisions of such will, is a limited partner in a partnership created under the laws of a State (i) providing for the creation of limited partnerships, and (ii) under which a limited partner has no right to take part in the control of the business without becoming liable as a general partner,

(C) which, at no time before or during a taxable year of the partnership ending within or with the taxable year of the trust, was (or was liable as) a general partner in such partnership, and

(D) which is required to distribute all of its income (within the meaning of section 643(b)) currently exclusively for religious, charitable, scientific, literary, or educational purposes, and which is required to distribute all of the corpus exclusively for such purposes,

there shall be excluded its share (determined under subsection (c) without regard to this paragraph and paragraph (11)) of gross income of the partnership as such limited partner and of the partnership deductions directly connected with such income, but, if such share of gross income exceeds such share of deductions, only to the extent that the partnership makes distributions during its taxable year which are attributable to such gross income. For purposes of the preceding sentence (i) any distribution made after the close of a partnership taxable year and on or before the 15th day of the fourth calendar month after the close of such taxable year shall be treated as made on the last day of such taxable year, and (ii) distributions shall be treated as attributable first to gross income other than gross income described in the preceding sentence, and shall be properly adjusted (under regulations prescribed by the Secretary or his delegate) to the extent necessary to reflect capital contributions to the partnership made by the trust, income of the partnership exempt from tax under this title, and other items.

(14) In the case of an organization which is described in section 501(c) (5), there shall be excluded all income used to establish, maintain, or operate a retirement home, hospital, or other similar facility for the exclusive use and benefit of the aged and infirm members of such an organization, which is derived from agricultural pursuits conducted on a ground contiguous to the retirement home, hospital, or similar facility and further provided that such income does not provide more than 75 percent of the cost of maintaining and operating the retirement home, hospital, or similar facility; and there shall be excluded all deductions directly connected with such income.

(c) Special rules applicable to partnerships.—If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business taxable income shall, subject to the exceptions, additions, and limitations contained in subsection (b), include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income. If the taxable year of the organization is different from that of the partnership, the amounts to be so included or deducted in computing the unrelated business taxable income shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within or with the taxable year of the organization. Aug. 16, 1954, c. 736, 68A Stat. 170; Apr. 7, 1958, Pub.L. 85–367, § 1(a), 72 Stat. 80; July 17, 1964, Pub.L. 88–380, § 1, 78 Stat. 333; Nov. 13, 1966, Pub.L. 89–809, Title I, § 104(g), 80 Stat. 1559.

Historical Note

1939 Internal Revenue Code. Similar provisions to this section were contained in sections 421(c), (d), 422(a), of the 1939 Internal Revenue Code.

1966 Amendment. Subsec. (a). Pub.L. 89-809 substituted ", the unrelated business taxable income shall be its unrelated business taxable income which is effectively connected with the conduct of a trade or business within the United States" for ", the unrelated business taxable income shall be its unrelated business taxable income derived from sources within the United States determined under subchapter N (sec. 861 and following, relating to tax based on income from sources within or without the United States".

1964 Amendment. Subsec. (b). Pub.L. 88-380 added par. (14).

1958 Amendment. Subsec. (b) (13). Pub.L. 85-367 added subsec. (b) (13).

Effective Date of 1966 Amendment. Amendment by Pub.L. 89-809 applicable with respect to taxable years beginning after December 31, 1966, see section 104(n) of Pub.L. 89-809, set out as a note under section 11 of this title.

Effective Date of 1964 Amendment. Section 2 of Pub.L. 88-380 provided that "The amendment made by the first section of this Act [adding par. (14) to subsec. (b) of this section] shall apply with respect to taxable years beginning after December 31, 1963."

Effective Date of 1958 Amendment. Section 1(b) of Pub.L. 85-367 provided that: "The amendment made by subsection (a) [adding subsec. (b) (13) of this section] shall apply to taxable years of trusts beginning after December 31, 1955."

Text of Revenue Acts. Complete original text of Revenue Acts 1954 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History. For a comprehensive analysis of this section as contained in House Report No. 1337, Senate Report No. 1622, and Conference Report No. 2543, which accompanied the Internal Revenue Code of 1954, see pp. 4300, 4951, 5280, respectively, of the 1954 U.S.Code Cong. and Adm.News. See, also, Pub.L. 85-367, see 1958 U.S.Code Cong. and Adm.News, p. 2311; Pub.L. 88-380, 1964, U.S.Code Cong. and Adm.News, p. 2835; Pub.L. 89-809, 1966 U.S.Code Cong. and Adm.News, p. 4446.

Cross References

Limitation on charitable deduction, see section 681 of this title.

Nonresident aliens and foreign corporations, income taxes of, see section 871 et seq. of this title.

Withholding of tax on foreign tax-exempt organizations, see section 1443 of this title.

Notes of Decisions

Charitable deductions 1
Royalties 2

Library references

Internal Revenue ⟹830, 837.
C.J.S. Internal Revenue §§ 404, 411.

1. Charitable deductions

Transfers to charitable corporation by wholly owned subsidiary of equity in bonds, acquired to obtain deductions for both premium amortization and charitable contributions, were not allowable charitable deductions under section 170 of this title, since they did not proceed from detached generosity but resulted primarily from parent's control and subsidiary's legal duty to comply, and were not made to another exempt organization within legislative intent in enacting predecessor to subsec. (b) (10) of this section, having been made from business income in administering parent's program, notwithstanding income was earned by subsidiary rather than directly. Crosby Valve & Gage Co. v. C. I. R., 1966, 46 T.C. 641.

2. Royalties

Income received by trust from underlying royalties on oil and gas wells was not taxable as "unrelated business taxable income" of otherwise exempt organization, since trust was not engaged in business. Robert A. Welsh Foundation v. U. S., D.C.Tex.1963, 228 F.Supp. 881, affirmed 334 F.2d 774.

Overriding royalties were within statutory exclusion of royalties from "unrelated business taxable income" of otherwise exempt organizations. Id.

That one of trust's reasons for transferring properties in order to receive overriding royalties was to relieve itself from tax on unrelated business income did not make income taxable. Id.

§ 513. Unrelated trade or business

(a) General rule.—The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a) (2) (B), to the exercise or performance of any purpose or function described in section 501(c) (3)), except that such term does not include any trade or business—

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) which is carried on, in the case of an organization described in section 501(c) (3) or in the case of a college or university described in section 511(a) (2) (B), by the organization primarily for the convenience of its members, students, patients, officers, or employees; or

(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

(b) Special rule for trusts.—The term "unrelated trade or business" means, in the case of—

(1) a trust computing its unrelated business taxable income under section 512 for purposes of section 681; or

(2) a trust described in section 401(a), or section 501(c) (17), which is exempt from tax under section 501(a);

any trade or business regularly carried on by such trust or by a partnership of which it is a member.

(c) Special rule for certain publishing businesses.—If a publishing business carried on by an organization during a taxable year beginning before January 1, 1953, is, without regard to this subsection, an unrelated trade or business, but before the beginning of the third succeeding taxable year the business is carried on by it (or by a successor who acquired such business in a liquidation which would have constituted a tax-free exchange under section 112(b) (6) of the Internal Revenue Code of 1939) in such manner that the conduct thereof is substantially related to the exercise or performance by such organization (or such successor) of its educational or other purpose or function described in section 501(c) (3), such publishing business shall not be considered, for the taxable year, as an unrelated trade or business. Aug. 16, 1954, c. 736, 68A Stat. 172; July 14, 1960, Pub.L. 86–667, § 4, 74 Stat. 536.

Historical Note

1939 Internal Revenue Code. Similar provisions to this section were contained in section 422(b) of the 1939 Internal Revenue Code.

1960 Amendment. Subsec. (b) (2). Pub. L. 86-667 included trusts described in section 501(c) (17).

Effective Date of 1960 Amendment. Amendment of section by Pub.L. 86–667 applicable to taxable years beginning after Dec. 31, 1959, see section 6 of Pub. L. 86-667, set out as a note under section 501 of this title.

Text of Revenue Acts. Complete original text of Revenue Acts 1924 to date, see volumes "Title 26—Internal Revenue Acts".

Legislative History. For a comprehensive analysis of this section as contained in House Report No. 1337, Senate Report No. 1622, and Conference Report No. 2543, which accompanied the Internal Revenue Code of 1954, see pp. 4300, 4932, 5250, respectively, of the 1954 U.S.Code Cong. and Adm.News. See, also, Pub.L. 86-667, 1960 U.S.Code Cong. and Adm.News, p. 3203.

Notes of Decisions

Library references

Internal Revenue ⟹630, 637.
C.J.S. Internal Revenue §§ 404, 411.

1. Trade or business activity

Tax exempt trust may be "regularly engaged in the business" within provi-

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

USES OF PREFERRED RATE MAIL

In our field hearings, and through written submissions, those who are affected by preferred rate mail privileges described how the privileges are used, and their significance. The information supplied provides insight into the range of uses of preferred rate mail and the users' perception of its importance. The participants in this proceeding have been very cooperative; indeed, without their help, we could not have obtained all the knowledge necessary to make informed judgments. This appendix contains our understanding of the uses of preferred rate mail -- distilled from the presentations of the participants. It is intended to be descriptive rather than statistically based. In section 1, we discuss second class (nonprofit and within county); section 2, nonprofit third class; and section 3, library rate fourth class.

1. Use of Second-Class

A. Nonprofits

Second-class nonprofit mail consists of all publications mailed by qualified nonprofit organizations outside the county of publication. In addition, the following publications qualify for the special nonprofit rate without regard to the nonprofit status of the publishing organization:

A. Publications issued by and in the interests of associations of rural electric cooperatives.

B. One publication of the official highway or development agency of the state that meets all Postal Service requirements and contains no advertising.

C. Program announcements or guides published by an educational radio or television agency of a state or political subdivision thereof or by a nonprofit educational radio or television station.

D. One conservation publication published by an agency of a state which is responsible for management and conservation of the fish or wildlife resources of that state.

Domestic Mail Manual, section 423.14.

Based on our study of this category of mail, newspapers compose 23 percent of the second-class nonprofit mailstream while magazines constitute 77 percent. See Appendix E. In FY 1985 the revenue foregone subsidy was $969.6 million, with the subsidy for second-class nonprofit amounting to $75.5 million or 7.8 percent of the total.

Communications to Members. Second-class nonprofit mail is used by a wide variety of organizations in order to communicate with their members. Labor, fraternal, religious, scientific and educational groups all use second-class to mail their magazines, catalogs and newspapers. It is claimed that subsidies are essential to an adequate level of service provided by these organizations. The mailing of college catalogs, student publications, and educational bulletins constitute a special use of second-class. See DMM, section 422.3. For example, the University of Nebraska-Lincoln (UNL) mails the "Undergraduate Bulletin" annually to newly admitted students and high school counselors at second-class nonprofit rates. UNL also mails the Lively Arts, a monthly "attractions in the arts" publication, at reduced rates.

Advertising. The major issue raised in our hearings with respect to the use of nonprofit second-class rates was the fact that many nonprofit publications compete for advertising dollars with similar for-profit publications.[1] The major advocate for elimination of second-class nonprofit subsidies was the Association of Business Publishers (ABP). According to ABP there is no justification for this subsidy "since nonprofit publications contain the identical editorial and advertising content as do their taxpaying counterparts." Brief of ABP at page 3. The advocates of no subsidy for second-class argue that all second-class periodicals have educational, cultural, scientific and informational value to their recipients which Congress recognized in the passage of 39 U.S.C. § 3622(b)(8). Examples of publications that compete in the marketplace for advertising and also receive subsidies are:

(1) Journal of the American Medical Association (competes with American Journal of Medicine),
(2) National Geographic,
(3) Food Technology,
(4) Training and Development Journal (competes with Training Magazine),
(5) Smithsonian,
(6) Harpers',

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[1] Our study shows that approximately 44 percent of nonprofit publications carry 10 percent or more advertising. See Appendix E, Table A4.

(7) Christian Science Monitor and
(8) Ms Magazine.

For their part, the second-class nonprofit publications argued that subsidized rates were set up specifically to ease the flow of information and to exchange differing points of view which are vital to the success of the democratic process. See, for example, Susan Dunlop and Gordon Spielman for the AFL-CIO and ILCA. See also American Society of Clinical Pathologists and American Lung Association of Minnesota. It has also been argued that subsidized rates for second-class nonprofit mailers have provided both the economic freedom for these organizations to communicate among their members as well as the public recognition that their communications are valuable to society generally. See Dr. John Stapert for The Church Herald and the religious press generally.

Many publications are supported solely by an apportionment of membership income. However, some publications find it necessary to sell advertising space in order to meet production and distribution expenses. See Gordon Spielman for the AFL-CIO and ILCA.

The opponents of subsidy for second-class nonprofits argue that when such publications carry advertising, they are transformed into a commercial entity which competes with, and cannot be distinguished from, taxpaying publications. It is further contended that once a nonprofit publication carries any advertising it should not be eligible for a subsidy on its editorial pound rate, advertising zone rate, or its piece rate. See ABP Brief at 12, 20.

B. Within-County Second-Class Rates

Despite its early exclusive association with rural weekly newspapers, the modern within-county second-class rate has in fact been widely available to a great variety of publications. In FY 1985, the within-county subsidy was $78.5 million for 1.8 billion pieces of mail. As discussed in the accompanying report, this broad eligibility has arisen because the legislative language relating to the subsidy has not been restrictive -- beyond using the county of mailing as the common denominator -- and has not distinguished among publications on the basis of frequency of publication, type of publication or -- at least until recently -- total circulation.[1]

Accordingly, in reviewing the uses of the within-county rate, the major factor to consider is that eligibility (assuming an otherwise qualifying nonprofit or regular-rate second-class publication) has been extended, until recently, to all copies of a second-class publication mailed from a post office of original or additional entry in the county where the publisher has a known office of publication. No special mailing permit is needed and the uses to which the within-county rate is put -- and the users -- are as varied as the types of qualifying publications and their purposes.

For most publications, the within-county rate applies to some, but not all, copies of an issue. In addition, its value differs from publication to publication; a qualifying publisher mailing 30,000 copies in a 300-square-mile area benefits considerably more if that area covers only one county rather than two or more. As indicated above, unlike certain other preferred rates, nonprofit status is not a requirement for eligibility for the within-county rate; in fact, it was originally intended for commercial publishers in rural areas who faced competition from other for-profit publishers.

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[1] A provision in the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272 (April 7, 1986) denies within-county rates to publications with more than half of their circulation outside the county of publication, but exempts publications with circulations of less than 10,000. See the Postal Rate Commission Report for more details on this provision.

Support for the subsidy. In general, the reasons advanced at the Commission's field hearings by those in favor of the in-county rate centered on arguments related to saving small town America in general and sparing small-town publishers and their advertisers and subscribers the impact of a rate increase. One witness not only supported retaining the in-county subsidy, but wanted it expanded beyond county lines to additional ZIP codes. Most characterized it as a benefit to the public at large, not simply to the publisher. They also said it helped maintain the identity of small towns and small communities by providing news and information about local events that would not be covered in a larger paper. The National Newspaper Association said it encourages the free flow of information essential to a free democracy.

Opposition to the subsidy. Not all the testimony on the within-county subsidy was favorable; some witnesses advocated its immediate elimination and others suggested it be transferred to and administered by another federal agency, such as the Small Business Administration. The Association of Business Publishers opposed it because it believes it is inappropriate for the federal government to subsidize one of the operating costs of a publication. John Goodman of the National Center for Policy Analysis suggested that instead of a postal rate subsidy, the publishers be given a direct cash payment which could be used to purchase postal services. Abbott Sparks, who testified as a private citizen but has 35 years' experience in publishing, said he did not think a single newspaper or magazine would be forced out of business if it paid full postage.

Users -- smaller city or county dailies and weeklies. Although eligibility has been extended to a broad range of publications, testimony at the Commission's field hearings indicates that the modern-day equivalents of the original beneficiaries of the within-county rate still use and depend on it. Ben Blackstock, manager of the Oklahoma Press Association, provided this profile of some of the current users: 168 of Oklahoma's 186 weeklies have circulations less than 5,000; two of the weeklies have their own carrier delivery network, but the others depend primarily on the mails and distribute about 90 percent of their copies that way. One daily in Colorado -- the Douglas County Daily News-Press -- has 98 percent of its circulation in the mail.

Three of the five community newspapers in Wise County, Texas, a county with a population of 38,000 on the outskirts of the Fort Worth-Dallas area, have circulations between 600 and 800. County Judge Robert Lee Holloway, Jr. said most of them deliver their papers by mail because an alternate delivery system is just not practical with 38,000 people spread out over 950 square miles. He also said:

> I know that small newspapers are mailed at preferred rates by the U.S. Postal Service, but I feel that these preferred rates are not subsidies to the publishers. If anything, they are subsidies to the people, because the founders of this democracy knew that it is important for people to read -- read everything, as means of self-education and as a means of keeping informed.

Many of the publishers said that elimination of the in-county rate would cause economic harm. Edwin W. Tucker, manager of the New Jersey Newspaper Association, said that in highly competitive areas where publishers rely heavily on the mail to distribute their papers, the within-county rate is a key element in the success or failure of a newspaper. He said publishers cannot easily pass the costs of increased postage to readers or advertisers and generally must try to absorb them. One publisher estimated that curtailment of in-county and limited circulation rates would result in an estimated

$2.00 increase in yearly subscription rates for the Hunterdon County (NJ) Democrat.

To those who would suggest that publishers simply raise advertising and subscription rates, some of the publishers indicate that to do so is a risky business because it can bring about a drop in circulation. Roy Eaton, publisher of the Wise County Messenger in Decatur, Texas, estimated that a 20 percent increase in his subscription rate would result in a loss of 20 percent of his subscribers. He believes that those no longer subscribing generally would be the poorer members of the community and a disproportionate number of senior citizens and minorities.

Users -- religious publications. In addition to eligibility for nonprofit second-class rates, the religious press is entitled to the within-county rate for qualifying copies of its publications. Weekly diocesan newspapers such as Catholic New York and the Texas Catholic, have been traditional users, as have some monthly religious publications. Mary Polanco, speaking on behalf of the American Jewish Press Association, the Associated Church Press, the Catholic Press Association, the Evangelical Press Association and the Southern Baptist Press Association, said the reader who subscribes to a religious publication is the most immediate beneficiary, but that society benefits as well.

Users -- other nonprofit and general publications. As indicated above, users of the within-county subsidy cut across the entire range of second-class publications. However, testimony at the field hearings came essentially from the two well-defined and well-organized groups cited above. Other obvious users, such as some college alumni publications, did not single out the within-county subsidy as an object of their support, but were in favor of second-class subsidies in general. Still other publications, such as magazines and [illegible] newspapers, did not address this subsidy.

2. Third Class

Third class is the principal vehicle for mailing matter eligible for the nonprofit subsidy. In FY 1985, the revenue foregone subsidy was $969.6 million of which third-class nonprofit accounted for $648.1 or 66.8 percent. Testimony or written comments were submitted by all the major categories of nonprofit organizations. This section briefly describes the primary uses of third class by nonprofit organizations.

The most common usages of third class are to solicit funds, and to disseminate information in the form of newsletters and periodicals. Respectively, 60 and 56 percent of third-class nonprofit mailings contain these two types of mail matter. Membership billings and promotional material relating to the sale of merchandise and services are found in 23 and 25 percent of third-class mailings. The survey conducted by Dunn and David further indicates that 74 percent of third class mailings contain no advertising and thus would not be affected by the placement of restrictions on advertising content.

Dissemination of Information

Representatives of the major organizational categories indicated at the field hearings that nonprofit mail is an economical and efficient means of communicating information. Religious organizations such as the National Council of Churches, Southern Baptist Church; First United Methodist Church, Middleton, Ohio; St. George Episcopal Church, San Antonio, Texas; Grace Lutheran Church, San Antonio, Texas; and St. Joseph's Rectory, Lockport, New York are among the religious groups that submitted testimony indicating that they rely on nonprofit mail to distribute newsletters, brochures, periodicals, etc. to their membership.

Philanthropic organizations use third class to distribute informational material to both contributors and beneficiaries of philanthropic services. The American Diabetes Association, Minnesota Affiliate, Inc. sends its monthly newsletter and notices of monthly meetings and events by third class. The American Lung Association of Georgia uses third class to distribute information to volunteers working on behalf of the organization and to those suffering from lung disease. The American Lung Association of California sent approximately 26,000 packets of health literature at third class rates last Christmas. The National Multiple Sclerosis Society mails its quarterly magazine "Inside MS" at third-class rates to 500,000 members of the National Multiple Sclerosis Society including doctors, health professionals and family members of people who have multiple sclerosis. The Girl Scout Council of Orange County uses third class "to communicate six times a year with 8,000 adult volunteers throughout our council's jurisdiction . . . and with the families of our 19,000 girls."

Cultural and educational organizations are frequent users of third class to keep the public informed of activities of the nonprofit organization. The Denver Museum of Natural History's annual mail volume of its membership newsletter, program mailings, film lecture series brochures exceeds 400,000 pieces. WETA public TV distributes its DIAL magazine by third class to inform its 140,000 members of upcoming programs. Universities and associated alumni associations use third class to recruit students, announce course offerings and disseminate news of interest to both alumni and students. The written submissions of the College of DuPage, Iowa State University of Science and Technology, Pepperdine University and the Georgia Institute of Technology indicate that these universities use third class nonprofit for these purposes.

Nonprofit rates are important to fraternal organizations and veteran organizations. Gerald Archuleta, editor of the OCAW Reporter, a bimonthly magazine published by the Oil, Chemical and Atomic Workers International Union indicated that in 1982 it was decided to mail the OCAW Reporter at third-class rates rather than at the more expensive second-class rates. He indicates that OCAW Reporter provides members vital information on occupational safety and health as well as a wide range of other information pertaining to activities of the union. Similarly, the American Legion uses third class to distribute The American Legion Magazine to its membership.

Solicitation of Funds

As a fund raising mechanism many nonprofit organizations are dependent on third-class mail. The Plymouth Park Baptist Church uses third class to send out its monthly contribution envelopes. Father John T. Ryan on behalf of the National Catholic Development Conference indicated that "[o]ur Catholic fund raisers mail approximately 600 million pieces of mail annually." The National Jewish Center for Immunology and Respiratory Medicine indicates that its total annual volume of third-class nonprofit mail is between 5 and 6 million pieces and that it has "no viable alternative to direct mail as a medium" to communicate, educate and solicit funds for support of biomedical research. The Salesian Missions indicates that space advertising in newspapers and magazines is too costly leaving the mails as the most economical and effective way of raising funds. According to the National Federation of the Blind there is no alternative to the mails to conduct mass solicitations as the amount they spend on postage "could barely buy a minute of network television time." Regardless, as noted in the testimony submitted on behalf of CARE, even if alternative methods of solicitation are employed, follow-up mailings are still required. The New York Public Library has attempted alternative means of fund raising and has found them to be neither cost effective nor productive. In fact, one alternative method, telemarketing, was found to be counter-productive.

The efficiency of direct mail for fundraising was acknowledged by various specialists engaged in fundraising activities on behalf of nonprofit organizations. The president of Royall and Company, noted that both the two major political parties use direct mail programs as a means of giving "individuals . . . a greater say in determining the direction of their parties." Joe Salta of Response Development Corporation notes that eighty percent of tax exempt organizations are considered small and thus are unable to afford major fund raising ventures such as the Easter Seals telethon. He indicates that both telemarketing and door-to-door solicitations are ineffective and costly in comparison to direct mail marketing.

The ramifications of increased postal rates on fund raising activities of philanthropic organizations were emphasized by numerous charitable organizations. The Virginia Children's Homes is an association which provides residential care, training, therapy for approximately 850 children requiring specialized care unavailable elsewhere. According to their witness, the "postal service is the lifeline of our existence." Their homes derive 71 percent of their operating funds from voluntary contributions, the majority of which are solicited through the mail. Increasing costs reduce the availability of funds to operate centers, leaving the care of children with government agencies. "These are children that somebody will be required to help -- the choice is a private non-profit facility funded 71% by contributions or a governmental agency funded 100% by taxes." Similarly, the Easter Seal Society estimates that each one cent increase in rates results in a $60,000 increase in mailing expenses or the equivalent of the cost of "1,500 speech pathology treatments or 150 camping experiences or comprehensive job placement opportunities for up to 40 severely disabled persons."

An interesting comment pertaining to small nonprofit organizations was provided by the Rheumatoid Disease Foundation. The Rheumatoid Disease Foundation is a small nonprofit organization that is currently funding five research projects and has treated and brought to cure/remission tens of thousands of people suffering from Rheumatoid disease. It states that it "cannot compete with large foundations, that are subsidized heavily through pharmaceutical industries with vested interests in maintaining palliative treatments, and who therefore directly and indirectly finance research programs and non-profit foundations to support symptomatic relief." The Rheumatoid Disease Foundation states that usually the difference between the lower non-profit rate and regular rate determines its income.

Collection of Membership Dues

Outside of noting that third class is used to collect membership dues there was not much in the way of oral or written submissions dealing with this subject. Membership dues are an important source of revenue for nonprofit organizations. Many religious, fraternal, cultural, educational and philanthropic organizations send out dues notices by third class.

Promotional Material Relating to Sales of Merchandise and Services

Continuing to subsidize promotional activities relating to the sale of merchandise and services was opposed by a number of witnesses making presentations at the field hearings. The crux of their contention is that subsidization of nonprofit organizations for commercial purposes results in unfair competiton with the private sector. The Small Business Administration's written statement identifies a broad spectrum of commercial activity in which nonprofit organizations are in direct competition with for-profit enterprises. The principal commercial activities discussed during the course of the field hearings involve the sale of insurance and other merchandise, the promotion of travel, the sponsoring of seminars and the sale of advertising in publications sent at third-class rates.

Travel. Travel agents associated with either the American Society of Travel Agents (ASTA) or the National Tour Association testified at the hearings about the unfair competitive advantage enjoyed by nonprofits, principally alumni associations, with respect to the promotion of travel tours. Some of the promotions illustrative of what they consider to be in competition with for-profit travel agents are as follows: (1) Beckham Tours cites a promotion by the Office of Alumni Relations of New York University of a "Theater London and Stratford Upon Avon and Oxford Tour;" (2) AAA Travel Agency cites promotions by the alumni associations of the University of Minnesota and Pennsylvania of trips to France and the Mediterranean; (3) Dee Larson on behalf of the National Tour Association cites advertising by a community services program of a tour to Galena, Illinois which is in competition with a tour sponsored by the for-profit Minneapolis AAA tour of "Southern Wisconsin and Galena, Illinois."

Statements in support of continued subsidization of promotional material involving travel were provided by many educational and cultural organizations plus a few organizations whose charitable mission, in part, directly involves travel. The amount of harm suffered by for-profit travel agencies appears to depend upon the type of travel being sponsored by the nonprofit organizations. Carolyn Emigh on behalf of the Nonprofit Mailers Federation notes that some nonprofit sponsored travel does not appear to be in competition with for-profit travel agencies. She questions whether Elderhostel, an educational organization which, through a network of over 850 colleges and universities, offers low cost residential academic programs for older adults, should "have to eliminate its study-abroad program simply because commercial travel agents are theoretically capable of offering a competitive travel plan but in reality do not find this class of business sufficiently profitable to go after?" In its written submission, Elderhostel indicates that only through its catalog mailed at nonprofit rates is it able to inform senior citizens of the various programs sponsored by Elderhostel. It is indicated that without the catalog

Elderhostel as an organization serving the educational needs of older adults would cease to exist.

Another type of travel promotion unlikely to be competitive with commercial travel promotions involves travel packages which require special equipment. The American Lung Association sponsors cruises equipped with special breathing apparatus to assist those with respiratory ailments.

Also there are other travel promotions having fairly strong ties to the sponsoring organization. For example, the Denver Museum of Natural History offers a travel program that "accommodated 1,900 individuals, taking them to study such topics as dinosaur tracks right out in the foothills or digging dinosaurs with paleontologists out in the field . . . . Other tours take you to Kenya, Tanzania, Botswana, and Zimbabwe and put you face to face with the lion. You learn how to track out in the field and you gain experience that is different than sightseeing." Similarly, the Denver Botanic Gardens offers trips to study horticulture, the National Audubon Society offers environmental trips, the Denver Zoological Foundation offers travel abroad to observe animals in their natural habitat, the St. Joseph's Indian School offers tours of Indian missions in South Dakota and many religious organizations offer religious pilgrimages and tours.

Educational institutions defend their promotion of travel tours. The Penn State Alumni Association states that Penn State has a long standing policy of having a professor present on international alumni tours sponsored by the Continuing Education Program. Furthermore, it is asserted that as an educational function, there is little difference between sending a group of students or alumni to share an educational experience with a professor in Antarctica, Galapagos Islands, or museums in Europe. Similarly, the Association of Rice Alumni states that with the exception of an occasional ski trip, its tours are highly educational. Other institutions such as the University of New Hampshire and the University of Wisconsin-Madison justify their travel promotions as a means of fostering alumni involvement in university activities which, in turn, results in donations to the university.

Merchandise. The most common promotions involving the sale of merchandise are the sale of memorabilia, insurance, religious merchandise and merchandise manufactured by the nonprofit organization. In addition, many organizations distribute inexpensive premiums in connection with their fundraising activities. The American Lung Associaton mails Christmas seals and name stickers. The Disabled American Vets distributes address stickers. Twin Cities Public TV, Minneapolis, Minnesota offers "nature type things, books, companion books, things of that sort, to encourage people to become first time members." The Blinded Veterans Association has distributed decals and name label pads as premiums and last year Oblate Missions, San Antonio, Texas sent out a candle and prayer card as a premium.

It is evident from the written submissions that many educational organizations sell memorabilia embossed with emblems identifying the merchandise to the nonprofit organization. Southern Methodist University sells a Boston rocker/cherry arm chair. The University of New Hampshire sells a number of products with its seal or indicia including chairs, mirrors, scarves and ties. The University of Washington solicited alumni to purchase the "University of Washington Grandfather Clock."

Other nonprofit organizations sell items more directly linked to the activities of the organization than embossed merchandise. The Denver Public Library Friends Foundation sells books at book auctions. The United Way sells a directory of community services at cost. Various art museums sell art reproductions. The Friends Kemp National Center for Child Abuse publishes, advertises and sells books and circulars relating to child abuse. Halt (Organization for Legal Reform), sells its legal assistance manuals. The Braille Work Center in Santa Paula, California, which is staffed by senior citizens, produces books and other material in braille. And, religious organizations sell or obtain donations for religious items such as Bibles, medallions and statues through the mails. For example, the Sacred Heart League, Billy Graham Evangelistic Association, Lowell Lundstrom Ministries and the Christian Board of Publications (Disciples of Christ) promote a variety of religious items through the mails.

Directly linked to the functioning of the nonprofit enterprise are mail promotions involving the sale of items produced by the nonprofit organization. In this category, the Christian Appalachian Project markets Christmas wreaths. The Bethesda Lutheran Home sells residents' made handicrafts including baskets, silk screens, greeting cards and Christmas ornaments. Berea College sells products made in their student crafts program by mail order catalog.

One area in which nonprofit organizations compete with for-profit enterprises is the sale of insurance. The American Bar Association sponsors an insurance policy for its members. The University of Iowa Alumni Association and Brigham Young University sell insurance programs to alumni. In response to arguments that Brigham Young should not sponsor insurance, Brigham Young Alumni Association's written submission indicates that 1,660 individual alumni and family members have purchased insurance through the university because they are "self employed, underinsured where they are now employed, or in some way in need of this service of our association."

Services. The most frequently mentioned sale of services involve user fees associated with nonprofit activities. Nonprofits providing cultural and educational benefits to the public rely on user fees to finance these activities. Some examples are tuition at educational institutions, ticket sales to the theatre or opera, and subscription charges to subscribers of National Geographic and Consumers Reports.

These fees are oftentimes generated through third class nonprofit promotional mailings.

An area subject to some criticism during the field hearings involves the sponsoring of seminars by nonprofit organizations. Some nonprofit organizations, for instance the American Management Association, sponsor seminars which are in direct competition with seminars being sponsored by for-profit training organizations. According to a Mr. Calano of Careertrack, a for-profit training company, the Negotiation Institute is a "perfect example" of how a for-profit enterprise can use a nonprofit organization for its own benefit. Mr. Calano stated that the Negotiation Institute

> . . . is a law firm, really, which has set up essentially a front non-profit. They will mail, you know, millions of brochures and generate tens of thousands of registrations for their public training programs. These training programs along with the brochure mailings will generate what is called on-site or private seminar inquiries where people attend and say, that's terrific, bring it to our company.
>
> They will process these inquiries and leads, book their trainers at fees of $5,000 and $10,000 per day, but they will do this through their law firm of Nierenberg, Zeif & Weinstein, so you can see that the non-profit mailing is being used to generate business for an ancillary for-profit organization.

Advertising. Another alleged abusive practice relating to nonprofit mailings is in the area of advertising. Publications, newsletters, and other periodic literature published by nonprofit organizations contain advertisements of products of for-profit companies. The nonprofit organizations are able to charge the advertiser a lower rate than the rate charged by for-profit publications because their postage costs for promoting their publications are lower than that for-profit publications. Publications of the American Medical Association, National Geographic, American Association of Retired Persons (Modern Maturity), and the Christian Science

Monitor apparently accept all legitimate advertising. It was noted that the Christian Science Monitor and the Smithsonian Institution run advertisements in Advertising Age soliciting advertisements.

While some publications accept essentially all legitimate advertising, others limit the types of advertising permitted in their publications. The American Society of Clinical Pathologists accepts only advertising "that is directly related to the exempt purposes of ASCP." The Association of Physical Plant Administrators Journal, which is mailed at third class rates, contains only advertising related to products and services of the association. The Children's Television Workshop accepts "selected" advertising consistent with the goals of the organization.

3. Use of Library Rate Mail

Library rate mail is used to send books, films and other eligible material to and from public libraries, schools, universities and other qualified nonprofit organizations. Under specified conditions the sender need not be a qualified organization: (1) publishers and distributors may use it to send books to public libraries, schools and universities, and (2) individual borrowers may use library rate to return material loaned by qualified organizations, generally public libraries and universities. In FY 1985, library rate volume was 45.6 million pieces, generating revenue to the Postal Service of $77.8 million, including subsidies which were 53% of the total.

The Commission has received presentations from users of this subclass -- public libraries, schools, universities, publishers, distributors, qualified nonprofit organizations, as well as individuals who use libraries' books-by-mail programs. One of the primary uses of library rate is for publishers and distributors to send books to schools, public libraries and universities. Another common use is inter-library loans. Library rate mail, with its unzoned rate schedule, may provide the most benefit to the institutions in more remote and more sparsely populated areas. For many weight categories, United Parcel Service and the Postal Service's parcel post offer lower rates for material traveling to the nearer zones; other options (such as delivery from a publisher's own vehicle) may be practical for more densely populated areas.

Publishers and distributors. The material eligible for library rate sent from publishers and distributors is limited to books. Publishers and distributors may use library rate to send books only to schools, colleges, universities and public libraries. This privilege was extended by statute in 1976, with the intent of benefiting the eligible recipients who might obtain lower prices for books. Currently advertising allowed in these shipments is restricted to "incidental announcements of books."

Library rate is not being used for inappropriate purposes according to Association of American Publishers-Recording Industry Association of America (AAP-RIAA) -- whose members include university, religious, nonprofit, and large and small commercial publishing companies, as well as producers of computer programs, video material and recordings. AAP-RIAA says its members include either negligible or no advertising in their shipments. AAP-RIAA suggests that library rate be extended to include the new technological equivalent of books (pre-recorded computer readable material and cassettes). The International Communications Industries Association says that library rate assists schools and libraries in purchasing its members' products. Eileen Cooke of the American Library Association (ALA), representing 104,000 libraries, agrees that delivery from publishers is one of the most important uses. She suggests that the subclass be enlarged to permit its use for returns to publishers (e.g., when the wrong book is sent).

As the benefit of this use is indirect, the libraries and schools could only offer predictions of potential consequences of its elimination. The Montana College of Mineral Science and Technology, however, stresses the importance of library rate in purchasing books, saying prices have escalated so much that additional postage costs could be the decisive factor. The University of California, San Diego predicts that book dealers and publishers would pass on any increase in postage. The Bellevue Christian School says its continued ability to operate a number of school programs may depend upon the continuation of preferred rates, including library rate. The Mounds View Public Schools add that they receive books under the library rate.

Sara Galligan for the Minnesota State Law Library says State government libraries purchase over 4000 books per year and expresses concern over the effect of increased postage. Ms. Galligan said she asked publishers whether they would pass along increased postage; three major ones said they would. She added that some publishers already itemize postage in bills. The librarian at the Adair Public Library (Iowa) reports that although some suppliers previously paid for the postage, now the library must pay that charge. However, according to J.C. Kapoor of the University of New Hampshire, some major publishers currently do not charge postage to libraries -- estimating the university does not pay postage for half of its monographic titles.

The Corning Public Library (Iowa), the Essex Public Library (Iowa), the Clarinda Public Library (Iowa), and the Great River Library System (Illinois) agree that they would face higher costs for books in the absence of library rate for publishers. The National Association of College Stores, after pointing to previous increases, predicts that increased postage passed through by publishers might make textbooks and other reference books prohibitively expensive. John Kurella of Kenyon Collge predicts that the elimination of library rate for both acquisitions and inter-library loans would translate into an annual reduction of 110 book purchases by the library. Association of Business Publishers, however, argues that book purchases would not be reduced with the elimination of library rate, predicting the effect would be limited to an increase of "a few cents postage per book."

The Commission was not able to obtain much information on whether this privilege is often used by publishers to promote books by sending complimentary copies to professors who might decide to use it for their classes. ALA points out that the publisher is required to address the book to a qualifying institution, with an individual's name confined to an "attention line." ALA states it is a practical necessity to include an individual's name on loaned material.

Inter-library loans. Public libraries and those of universities as well as libraries of other organizations have established many cooperative programs in which they lend material among participants. Unlike publishers and distributors, libraries and the other qualifying organizations enjoy a wider variety of material qualifying to travel library rate. ALA says the loans may include books, periodicals, films, sound recordings, and other library and museum materials.

Joseph Eisner of the public library in Massapequa, New York, says library rate provides most benefits to areas west of the Mississippi. His library does not often mail books; instead, it usually loans books through a system supported by New York State. On the other hand, the Great River Library System, a 70-member Illinois cooperative, fills 40% of requests by mail, at a cost last year of $30,000. According to Ted Suss of the Minnesota Department of Education, inter-library loan is a major service, with over 300,000 loans yearly. Bernard A. Margolis says the Monroe County Library System (Michigan) now relies more heavily on cooperative efforts because of a lack of funds to make purchases. Darlene Staffeldt of the Montana State Library says the state's 640 libraries are dependent on each other and the Postal Service; she believes Montana does not have options available in some eastern and more populated states. The North Country Library Cooperative serves seven counties of northeast Minnesota, making loans to school, public, special (hospital and genealogical), and academic libraries. For the St. Paul Public Library, Roger Sween says that it loans 1000 items per month and notes that libraries cannot pass added costs to users.

The University of Colorado uses library rate primarily to share resources by inter-library loans. Last year it borrowed 2,848 books out-of-state and loaned 2,664. The March 1986 library rate increase is expected to add $1000 to its annual costs. The Montana College of Mineral Science and Technology, with a very small library of its own, borrows extensively to meet the needs of 1600 students and its research faculty. Southern Methodist University annually mails about 3,000 inter-library loans; the average weight is two pounds. Iowa State University, represented by Warren Madden, says its library is a major resource center for the state and nation. He asserts that library rate is essential for the dissemination of information (with 1700 pieces mailed in FY 1985) and he notes that its elimination would cause a significant increase in cost. The

University of Minnesota sent 20,000 pieces of library rate mail in 1985. Raymond Rikansrud of the University of Washington says its collection is unique and should be made available widely. He says library rate makes up 1% of the University's preferred rate volume but 6% of the costs. With its specialized research collection, the Friends Kempe National Center has over 2000 requests for material each year.

The public library in the small town of Adair, Iowa (population 900) has a borrowing agreement with the Council Bluffs library which has involved the loan of around 300 books a year. The librarian is concerned that postage increases might force curtailment of this service. Gerry Rowland of the Scott County Library System (Iowa) says that postage increases would have a severe impact on the sharing of resources. Nadine Philips of the Akron Public Library says that postage increases would mean that most libraries would have to reduce inter-library loans. Joyce Clark believes that postage increases would result in the Clarinda Public Library dropping out of the inter-library loan program; those speaking for the Corning Public Library and the Essex Public Library agree. Dorothy Horton who runs the library at the Clarinda Treatment Complex for the Iowa Department of Corrections is concerned that increased postage might make other libraries unwilling to loan books to that facility. Sara Galligan of the Minnesota State Law Library says increased postage might jeopardize the loan program in which over 600 items were borrowed last year.

According to ALA, computerized data bases will create additional demand for inter-library loans. In FY 1985 Virginia Polytechnic Institute loaned 17,000 books and copies of articles and borrowed 3000. Lynn McAuley says the Virginia libraries are working to set up a statewide network for resource sharing -- whose costs would be affected by postage increases. She believes that increases would have a deterrent effect on the flow of information.

The Minnesota libraries have a program which is a variation of inter-library loans. Participants use the preferred rate to send unneeded volumes to other libraries. The Minnesota Law Library currently provides over 150 items a year. Sara Galligan is concerned that postage increases might cause some libraries to withdraw from the program.

ALA is concerned about the potential effect of a ban on advertising traveling at the preferred library rate. Eileen Cooke points out that the books, periodicals, films and other material sent through inter-library loans and books-by-mail may very well contain advertising. Having considered this issue, we do not believe there has ever been any intent to eliminate "pre-existing" advertising from the library rate mail of public libraries and other qualifying institutions. For example the "pre-existing" advertising in a magazine sent on an inter-library loan is not expected to confer any benefit on the library, nor would the library have arranged for the publication of that advertising.

Books-by-mail. These programs use library rate to send books to people who might find it inconvenient or difficult to travel to the library. ALA says library rate is essential in order that loans not be limited to books on the shelf and only to patrons who can come in for them. The Fairbanks North Star Borough Public Library (Alaska) makes monthly book shipments to 150 families living in remote areas -- the only library service available to them. The average shipment weighs 15 pounds and costs $2.49; the library pays the postage out and the patron, back. Florence Collins of Lake Minchumina, Alaska, says she is 150 miles from the nearest bookstore or library. She depends on the monthly "library box" containing around 10 books from the Fairbanks library.

The Kitchigami Regional Library (Minnesota) has a program to mail paperbacks selected from a catalog with 500 titles. The library pays postage both ways. However, it has decided to phase-out this program by the end of 1986, owing to increased costs. The Mideastern Ohio Library Organization, serving six counties, has about 6000 books-by-mail users, with an annual circulation of about 110,000. In the summer, a special children's catalog is available. The average shipment is two pounds (74¢ postage). Members are concerned that a significant postage increase might require service curtailment.

Darlene Staffeldt believes that the Montana State Library's books-by-mail is the access to information for many of the residents of the sparsely populated state covering vast geographic areas. Throughout six rural Minnesota counties in 1985, the Viking Library System mailed 62,000 books. Included in the shipments are catalogs as well as information on other library services. David Barton says this program is dependent on library rate, as postage is now 45% of its cost. Rebecca Patton of the North Country Library Cooperative says rural Minnesota residents rely on the program and might have to travel 200 miles for alternatives if it were curtailed due to the elimination of subsidized postage.

The Arrowhead Library System includes 28 public libraries serving seven Minnesota counties with a population density of about 12.5 per square mile. Its Mail-A-Book program loaned 120,000 items in 1985. Harry Whitmore says the users, often elderly and on a fixed income, use other options infrequently. He believes that a postage increase would mean cutbacks -- creating a hardship to those in remote rural areas. The Pierce County Library Service, six public and one county library, serving 35,000 Wisconsin residents provides the elderly, homebound, handicapped and those in remote rural areas with its books-by-mail program. The St. Croix County Library System, serving six Wisconsin counties, each month sends out around 5000 shipments at a cost of approximately $3000.

The books-by-mail programs often offer large-print books which are heavier and therefore more expensive to mail. The Walnut Public Library (Iowa) now requires books-by-mail patrons to pay return postage, with the exception of large-print books coming back from retirement homes. Karl Helicher says increased postage jeopardizes the Pennsylvania Library Association's program loaning large-print books free of charge.

Film libraries. Some of the qualifying institutions discussed the use of library rate in circulating films from their collections. In 1985 the University of New Hampshire loaned 7000 films to schools and campgrounds at a cost of $4000. Emily Smith says the University produces and acquires educational films for this program. The University of Georgia uses library rate for mailings from its film and drama loan libraries. Richard Lane says these libraries are unique in the state. The primary users are the Georgia public schools.

Slippery Rock University uses library rate to return educational films. Stephen Hulbert believes that postage increases have the potential to affect the extent and form of usage of these films. The University of Minnesota in 1985 spent $23,000 in library rate postage to mail 15,500 films, 3000 independent study sound recordings and 2000 catalogs of films. The University of Nebraska-Lincoln mailed 9000 films at library rate last year. Disseminating specialized material, the House Ear Institute mails video tapes on newly developed surgical techniques and courses to those in the medical community.

Membership premiums. Library rate can be used by qualified organizations to send premiums to persons who become members (and contributors). The information before us does not show the extent of this use. In considering this matter, it should be remembered that lower cost alternatives are often available if the item does not have to travel very far. In our proceedings, Sally Wells of WETA, a public television station, says premiums are mailed library rate or sent through United Parcel Service. Mary Fletcher of the Denver Public Library Friends says her organization often offers a gift book with membership, but she does not indicate whether library rate is used.

Other uses. Those presenting information in this proceeding also offer insight on less common uses of library rate. In some of the library systems, such as Arrowhead in Minnesota, library rate mailings substitute for van delivery, particularly for the more remote libraries. The libraries in the more densely populated areas might take advantage of it to fill requests for bulk quantities of material (Plainedge Public Library) or for its own publications and other informational mailings (New York Public Library).

James Merrell of the Christian Board of Publication describes the use of preferred rates by his book publishing division. He says the religious publications are sent to those who have little other access to the material. According to Mr. Merrell, the company keeps the prices as low as possible because its purpose is the dissemination of the publications; however, higher costs must be passed on. Similarly, Wycliffe Bible Translators use library rate in distributing some of its publications.

Qualifying organizations sometimes use library rate for the shipment of bulky items. The Potomac and Chesapeake Association of College Admission Counselors use it for bulk shipments of catalogs to high schools. The University of New Hampshire uses library rate to send free art education material to 450 schools in New Hampshire and Maine.

Nonprofit Third-Class Study

I. Description of the Study

The primary purpose of this study was to ascertain the proportion of various types of advertising contained in nonprofit third class. This required information on the content of mail and, since there are known seasonality characteristics, the mail has to be representative of an entire year. The Commission determined that the best and perhaps only way of obtaining the necessary information in the time available was by surveying a random sample of nonprofit third-class mailers and requesting that they supply a sample piece from each mailing for the previous twelve months.

The Commission engaged as a consultant a survey research expert, Dr. Maureen Kallick VanDine, Project Director of the Postal Service's Household and Nonhousehold Mailstream surveys conducted by the Survey Research Center at the University of Michigan.[1] The Commission also engaged as a consultant a sampling expert, Mr. Steven Heeringa, Director of the Sampling Section, Survey Research Center, who had designed the sample for the mailstream studies. The Commission then awarded a contract to the survey research firm of Dunn & David of New York City to make the required mailings and follow-up phone calls, code and keypunch the data, and to provide data processing for the necessary tabulations. The staff of the Commission was involved in all stages of the study and bears responsibility for the resulting information.

A two-stage probability sample of 2,500 permit holders was drawn using a tape furnished by the Postal Service containing information on name, address, and category of qualifying organization (e.g., religious, educational, etc.) for all permit holders. The first stage of sampling selected 50 post offices and the second stage selected 50 permit holders from each of the offices.[2] In addition, 35 very large mailers were identified and included in the survey. All mailers in the sample were contacted by letter requesting them to furnish the contractor a sample piece from each mailing made during the previous twelve months. They were also asked to furnish copies of the Statement of Mailing for each mailing in order to determine volume and postage. The Postal Service supplied copies of the mailing statements in cases where the mailer did not have them available.

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[1] These studies, conducted at a cost of several million dollars, remain the most complete studies of the postal mailstream. See Household Mailstream Study, Final Report, Vols. I, II & III, 1978 and Nonhousehold Mailstream Study, Vols. I, II, & III, July 1980, Survey Research Center, Institute for Social Research, The University of Michigan.

The mailers selected to participate were assured by the Commission that data obtained from them would be held in confidence by the contractor. The only use of the data would be to develop aggregates and no information would be released on individual mailers. The mailers were also informed of the purposes for which their data would be used.

It was discovered that some of the permit holders on the USPS permit holder tape had become defunct, had moved out of the post office included in the first stage of the sample, or had address information insufficient to allow our letter to be delivered to them. These were removed, leaving 1,942 mailers in the final sample.

Follow-up phone calls were made to each sampled mailer to answer any questions and to encourage participation in the survey. Mailers are still responding but the data reported here include responses received as of June 4, 1986.[3] The Commission plans to make available supplemental tables which will include responses received after that date.

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[2] The first stage was stratified using the revenue of third-class mail. The second stage was not stratified owing to a lack of volume information for the individual permit holders.

[3] The approximately 100 responses received after that date had not completed coding and keypunching by June 10, the date the tabulations included here were produced.

Adequate data have been received from 48 percent of the sample.[4] Because of the cut-off date, the tabulations presented here are based on 43 percent of the sample. Unfortunately many mailers simply did not retain the requested information in their files. It was also difficult for frequent mailers to respond owing to the quantity of material which had to be located. Considering these difficulties we feel the response rate is high. We have no reason to believe that nonrespondents have different characteristics than respondents. Consequently, it is felt that the response rate is adequate to ensure the reliability of the data collected (i.e., the results are representative of nonprofit third class as a whole).[5] An exception is the data on political party mail. The response rate for this category was so low as to be negligible, and therefore does not furnish reliable estimates.[6] But, because political mailings are such a small portion of total nonprofit third class, this problem does not affect the validity of the total sample.

A report from the contractor, Dunn & David, is on file in the Commission's Docket Room and is available for inspection. It contains a technical description of the sample procedures, table format, data collection procedure, and data analysis. In addition, it contains as exhibits copies of all materials mailed to sampled mailers and forms used for coding mail pieces and recording information on telephone calls.

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[4] The response rate for the very large mailers thus far is 51 percent.

[5] For example, the estimate of total volume for the twelve-month period covered by the data collection is within two percent of the USPS estimate.

[6] The survey results indicate an annual volume of just 28 million pieces. Independent estimates made by the Postal Service indicate the volume of political party mailings are in excess of 200 million pieces annually in a normal year and 300 million pieces in a national election year.

II. Analysis of the Data

The permit data in Table 1 at the end of this appendix are from the USPS permit data tape and the volume data are from the Commission's nonprofit mail survey. It can be seen that there are nearly 305,000 permit holders and that almost 45 percent are religious organizations. Educational qualifying organizations[1] account for nearly 27 percent and philanthropic organizations nearly 13 percent of the permits. The six remaining categories combined account for only 16 percent. It can also be seen that religious organizations are disproportionately small mailers, because while accounting for nearly 45 percent of the permits, they account for only 26 percent of the volume. In contrast, scientific and philanthropic qualifying organizations are disproportionately large mailers accounting for 14 percent of the permits but 32 percent of the volume.

Table 2 is a multi-page tabulation of permit holders by state, and is provided as a convenience to the Congress. Our analysis found that the total number of permit holders is highly correlated with state population.[2]

The remaining tables discussed in this appendix are tabulations from the Commission's survey.

Table 3 shows the amount of advertising by category of qualifying organization. The total number of projected pieces annually is shown at the top left. Thus, the total annual volume is 10,826,000,000 pieces and, for example, religious qualifying organizations have a projected volume of 2,832,000,000 pieces. For all of nonprofit mail, 72 percent contains no advertising. For the purpose of this study, "advertising" means an announcement whose purpose is to sell a product or service.

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[1] Many educational qualifying organizations are not traditional educational institutions. They qualify for a nonprofit permit because they disseminate information to the general public. (*See* Domestic Mail Manual, Sec. 623.232.)

[2] $R^2=0.95$

It can be seen in Table 3 that mail from religious organizations has much less advertising (9 percent) than average (28 percent), while scientific and veteran organizations have much more (60 percent and 36 percent, respectively) than average. The various gradations of quantity of advertising in a mail piece shown in Table 3 indicate a wide range in the amount of advertising in pieces which contain any advertising at all. Overall only 12 percent of the mail is devoted exclusively to advertising. Mail from scientific organizations has by far the largest percent (45) containing only advertising.

Table 4 shows the purposes of mail pieces. Because mail pieces frequently have multiple purposes, the entries in each column add to more than 100 percent. Overall, content coded as information is a purpose in nearly two-thirds of the pieces. Membership and solicitation of funds are purposes which are frequently closely related; when summed together this figure is somewhat higher for religious and philanthropic organizations (90 and 88 percent, respectively) than the average (72 percent).

Table 5 shows type of mail enclosures. These also sum to more than 100 percent because of multiple enclosures. Merchandise is enclosed in 6 percent, and letters are enclosed in 65 percent of the total pieces. Magazines and journals constitute 13 percent of the class. Labor, agricultural and fraternal organizations' mail is predominately magazines and newsletters. As expected, return envelopes are common enclosures.

Table 5A shows the types of enclosed products. It can be seen that merchandise is virtually all unsolicited gifts such as pencils, Easter seals, key chains, etc.

Table 6 shows the type of external container. As can be seen, letter-size envelopes predominate with 59 percent. There are very few post-card-size pieces in nonprofit third class. Folded sheets of paper constitute 13 percent.

Table 7 is a multiple page table showing the types of products and services offered for sale. It will be noted that the row subcategories separate products and services into those that are related to or associated with the organization's function and those that are not. As an example, a recording performed by and offered for sale by the same orchestra would be related to that organization's function. A tote bag would be neither related to nor associated with to the orchestra's function. An article is not related to an organization's function if it simply bears the organization's logo. An article or service must be essentially manufactured by, produced by, or performed by an organization to be related to or associated with the organization's function.

The heading of Table 7 states "Percent of Pieces Containing Any Advertising." It will be recalled from Table 1 that 28 percent of the total pieces contain any advertising. Thus, overall the total number of projected mail pieces on Table 7 (see top left) is 2,706,000,000 (or 28 percent of the total for nonprofit third class as a whole). The table shows that 13 percent of the pieces with any advertising contain ads for gift premiums. The 13 percent is made up of one percent service premium directly associated, 5 percent merchandise directly associated, and 8 percent merchandise not directly associated. Because of rounding error, this sums to 14 percent rather than 13 percent which is shown. Because of multiple ads in the same mail piece, the columns of the table sum to more than 100 percent.

Ads for merchandise are contained in 63 percent of the pieces with any advertising: travel services - 13 percent; financial services - 10 percent; insurance - 17 percent; educational courses - 27 percent; cultural - 4 percent; social services - 11 percent; organizational functions - 6 percent; other products and services - 22 percent; and local stores and services - 13 percent.

The subcategories of Table 7 are not discussed further at this point because the data are summarized in Table 9. However, it is necessary to be familiar with Table 8 first in order to understand Table 9.

Table 8 presents the division of advertising into Type A, which the Commission recommends remaining eligible and into

Type B, which the Commission recommends being made ineligible. The rationale for this is spelled out in the section of the Report on Eligibility Reduction for Commercial Uses. Basically Type A advertising is for products or services related to the organization's function. However, Type A advertising includes no advertising for travel, insurance or financial services regardless of their relation to the organization's function. Gift premiums are neither Type A nor Type B because they are not really being offered for sale when the value of the gift is significantly less than the donation or membership fee required. This condition had to be met in order for the ads in the mail pieces in this study to be recorded as gift premiums. All other advertising falls under Type B. Thus, Type A and Type B advertisements are exclusive. However, because of multiple advertisements in the same mail piece, a mail piece can contain both Type A and Type B advertisements.

Table 9 is a tabulation of the amount Type A and Type B advertising. The base of this table is total nonprofit third-class mail. Fourteen percent contains any Type B advertising. Thus, if the Commission's eligibility recommendation for this class were adopted, then 14 percent of the mail, as it exists now, would be eliminated. This represents roughly $80 million of subsidy; however, changes in eligibility could provoke significant changes in mail use. These figures thus cannot be used to project firm budget savings. It can be seen that the religious and educational categories would not be affected greatly by these eligibility recommendations as they have little Type B advertising (2 and 7 percent, respectively). In contrast, scientific, labor and veteran's organization mail would be greatly affected, as 35, 40, and 60 percent, respectively, of their mail contains any Type B advertising. Finally, 16 percent of philanthropic and 15 percent of fraternal organizations' mail would be affected by rules restricting Type B advertising.

Table 10 shows type of advertising by different containers. The quantity of Type B advertising is disproportionately high for magazines and journals, newspapers, flat-sized envelopes and folded sheets. It is quite low for letter-size envelopes. Obviously, many magazines and newspapers which are in nonprofit third class will become ineligible if the Commission's recommendations on Type B advertising are adopted. However, if these publications have subscribers or requestors, they will be eligible for nonprofit second class.

Tables 11, 12, 13, and 14 all display data based on small, medium and large mailers. Small is defined as under 100,000 pieces per year, medium is between 100,000 and one million pieces, and large is more than one million.

Table 11 shows that the amount of advertising decreases with the size of the mailer. Seventy-four percent of the pieces of large mailers have no advertising, 67 percent of the pieces of medium mailers, and 53 percent of the pieces of small mailers. However, all three categories have about the same percent of pieces which contain only advertising.

Table 12 shows that large mailers are much more likely to solicit membership (41 percent) than either small or medium (13 percent each) mailers. Large mailers are also more likely to solicit donations (37 percent) than small (26 percent) or medium (27 percent) mailers. In contrast, small and medium mailers are more likely to provide content coded as information in their mailings (82 percent) than large mailers (58 percent). Again, these totals add to more than 100 percent because of multiple purposes.

Table 13 shows type or enclosure by mailer size category. It can be seen that small and medium mailers are about two and one half times more likely to send a magazine or newsletter than a large mailer. In contrast, large mailers are almost two and one half times more likely to send a return envelope than a small or medium mailer. Moreover, large mailers are at least three times more likely to enclose some unsolicited merchandise than are medium or small mailers.

Table 14 shows type of advertising by size of mailer. Interestingly, there is little variation in the amount of Type B advertising by size of mailer. The only significant variation seems to be in the amount of Type A advertising. Small mailers have 44 percent more than medium and twice as much as large mailers.

Finally, Table 15 presents type of indicia for nonprofit third-class mail by type of indicia. It can be seen that little use is made of pre-cancelled stamps. As expected for bulk mailings, use of permit imprint is predominant.

The remaining tables (16, 17, 18, and 19) are cross tabulations and are included without comment.

[illegible] small ballots; [illegible] larger [illegible] more than one million.

Table 11 shows that the amount of advertising [illegible] with [illegible] of the ballot. [illegible] [illegible] of the places of small ballots. [illegible] all three [illegible] about the same percent of places using [illegible] advertising.

Table 12 shows that large ballots are much more likely to [illegible] percent) than either small or medium ([illegible] percent) ballots. Large ballots are also more likely to [illegible] percent) than small ([illegible] percent) or medium ([illegible] percent) ballots. In contrast, small and medium ballots are more likely to [illegible] no information [illegible] ballots ([illegible] percent) than large ballots ([illegible] percent). Again, this result [illegible] than the large [illegible] of multiple [illegible]).

Table 13 shows types of [illegible] by ballot size. [illegible] it can be seen that small and medium ballots are [illegible] more likely to have a [illegible] than a large ballot. In contrast, large ballots are [illegible] more likely to have a [illegible] than a small or medium ballot. Moreover, large ballots are at least three times more likely to [illegible] than any medium or small ballots.

Table 14 shows type of advertising by size of ballot. Interestingly, there is little variation in the amount of type [illegible] advertising by size of ballot; the only significant variation

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TABLE 1

THIRD-CLASS NONPROFIT PERMITS AND VOLUME BY TYPE OF QUALIFYING ORGANIZATION

	TOTAL	RELIGIOUS	EDUCATIONAL	SCIENTIFIC	PHILANTHROFIC	AGRICULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
PERMITS	304,896	136,396	81,001	4,491	38,682	4,136	6,561	9,616	22,984	708
Percent of Total	100.0	44.7	26.6	1.5	12.7	1.4	2.2	3.2	7.5	0.2
VOLUME (Millions)	10,826	2,832	3,530	745	2,675	76	75	554	311	28
Percent of Total	100.0	26.2	32.6	6.9	24.7	0.7	0.7	5.1	2.9	0.3

Source: Postal Service furnished tape of data on all third-class nonprofit permit holders, and Postal Rate Commission Nonprofit Mail Study, June 1986.

TABLE 2

DISTRIBUTION OF THIRD-CLASS NONPROFIT PERMIT HOLDERS BY STATE AND TYPE OF QUALIFYING ORGANIZATION

	TOTAL	RELIGIOUS	EDUCA-TIONAL	SCIEN-TIFIC	PHILAN-THROPIC	AGRI-CULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
ALABAMA	3,957	2,256	908	84	314	23	67	75	223	7
	100.0	57.0	22.9	2.1	7.9	0.6	1.7	1.9	5.6	0.2
ALASKA	690	229	257	3	118	13	25	12	28	4
	100.0	33.2	37.2	0.4	17.1	1.9	3.6	1.7	4.1	0.6
ARIZONA	3,581	1,644	822	63	537	20	102	142	238	6
	100.0	45.9	23.0	1.8	15.0	0.6	2.8	4.0	6.6	0.2
ARKANSAS	3,101	1,855	544	27	306	89	45	85	142	5
	100.0	59.8	17.5	0.9	9.9	2.9	1.5	2.7	4.6	0.2
CALIFORNIA	28,726	10,516	8,879	419	4,917	195	863	784	2,077	56
	100.0	36.6	30.9	1.5	17.1	0.7	3.0	2.7	7.2	0.2
COLORADO	4,339	1,835	1,449	80	390	49	99	106	316	9
	100.0	42.3	33.4	1.8	9.0	1.1	2.3	2.4	7.3	0.2
CONNECTICUT	4,240	1,215	1,618	52	900	23	83	105	221	22
	100.0	28.7	38.2	1.2	21.2	0.5	2.0	2.5	5.2	0.5
DELAWARE	801	311	206	18	130	5	18	28	80	4
	100.0	38.8	25.7	2.2	16.2	0.6	2.2	3.5	10.0	0.5
DISTRICT OF COLUMBIA	2,057	336	1,097	78	309	6	64	34	74	44
	100.0	16.3	53.3	3.8	15.0	0.3	3.1	1.7	3.6	2.1
FLORIDA	11,948	5,322	2,639	200	1,726	119	292	606	1,011	30
	100.0	44.5	22.1	1.7	14.4	1.0	2.4	5.1	8.5	0.3
GEORGIA	7,659	4,592	1,659	102	574	109	97	128	388	7
	100.0	60.0	21.7	1.3	7.5	1.4	1.3	1.7	5.1	0.1
HAWAII	919	346	269	14	197	7	35	17	27	4
	100.0	37.6	29.3	1.5	21.4	0.8	3.8	1.8	2.9	0.4

	TOTAL	RELIGIOUS	EDUCATIONAL	SCIENTIFIC	PHILANTHROPIC	AGRICULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
IDAHO	1,055 100.0	494 46.8	246 23.3	13 1.2	94 8.9	38 3.6	39 3.7	33 3.1	91 8.6	6 0.6
ILLINOIS	13,060 100.0	5,721 43.8	3,860 29.6	173 1.3	1,581 12.1	200 1.5	280 2.1	412 3.2	785 6.0	35 0.3
INDIANA	10,768 100.0	5,463 50.7	1,820 16.9	69 0.6	959 8.9	79 0.7	236 2.2	364 3.4	1,766 16.4	11 0.1
IOWA	5,345 100.0	2,472 46.2	1,263 23.6	82 1.5	575 10.8	240 4.5	107 2.0	157 2.9	432 8.1	16 0.3
KANSAS	4,498 100.0	2,068 46.0	1,198 26.6	54 1.2	524 11.6	133 3.0	65 1.4	143 3.2	308 6.8	5 0.1
KENTUCKY	3,284 100.0	1,745 53.1	724 22.0	59 1.8	333 10.1	43 1.3	62 1.9	74 2.3	233 7.1	11 0.3
LOUISIANA	4,200 100.0	2,038 48.5	1,106 26.3	82 2.0	354 8.4	39 0.9	98 2.3	143 3.4	337 8.0	2 0.0
MAINE	1,694 100.0	606 35.8	530 31.3	33 1.9	221 13.0	31 1.8	23 1.4	91 5.4	152 9.0	4 0.2
MARYLAND	4,662 100.0	1,738 37.3	1,451 31.1	132 2.8	642 13.8	38 0.8	109 2.3	186 4.0	312 6.7	29 0.6
MASSACHUSETTS	9,914 100.0	2,855 28.8	3,734 37.7	156 1.6	1,561 15.7	55 0.6	162 1.6	371 3.7	1,004 10.1	13 0.1
MICHIGAN	11,777 100.0	5,409 45.9	2,996 25.4	139 1.2	1,308 11.1	144 1.2	392 3.3	453 3.8	915 7.8	11 0.1
MINNESOTA	7,643 100.0	3,325 43.5	2,167 28.4	61 0.8	880 11.5	169 2.2	147 1.9	372 4.9	505 6.6	13 0.2
MISSISSIPPI	2,322 100.0	1,368 58.9	472 20.3	37 1.6	174 7.5	54 2.3	44 1.9	47 2.0	122 5.3	3 0.1
MISSOURI	7,844 100.0	3,787 48.3	1,815 23.1	118 1.5	923 11.8	155 2.0	170 2.2	233 3.0	622 7.9	15 0.2

	TOTAL	RELIGIOUS	EDUCA-TIONAL	SCIEN-TIFIC	PHILAN-THROPIC	AGRI-CULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
MONTANA	1,208	480	335	14	145	43	30	28	129	4
	100.0	39.7	27.7	1.2	12.0	3.6	2.5	2.3	10.7	0.3
NEBRASKA	3,488	1,503	994	35	356	116	73	118	285	7
	100.0	43.1	28.5	1.0	10.2	3.3	2.1	3.4	8.2	0.2
NEVADA	758	300	168	1	124	6	36	37	80	5
	100.0	39.6	22.2	0.1	16.4	0.8	4.7	4.9	10.6	0.7
NEW HAMPSHIRE	1,699	518	545	25	190	23	22	206	163	5
	100.0	30.5	32.1	1.5	11.2	1.4	1.3	12.1	9.6	0.3
NEW JERSEY	8,872	3,187	2,532	155	1,673	19	179	369	703	41
	100.0	35.9	28.5	1.7	18.9	0.2	2.0	4.2	7.9	0.5
NEW MEXICO	1,500	684	447	22	140	18	34	51	99	5
	100.0	45.6	29.8	1.5	9.3	1.2	2.3	3.4	6.6	0.3
NEW YORK	23,517	8,794	8,054	402	3,396	162	491	736	1,408	61
	100.0	37.4	34.2	1.7	14.4	0.7	2.1	3.1	6.0	0.3
NORTH CAROLINA	7,481	4,150	1,615	88	836	89	81	179	427	7
	100.0	55.5	21.6	1.2	11.2	1.2	1.1	2.4	5.7	0.1
NORTH DAKOTA	1,098	514	230	6	123	60	21	43	96	3
	100.0	46.8	20.9	0.5	11.2	5.5	1.9	3.9	8.7	0.3
OHIO	17,659	8,775	4,004	224	1,892	214	387	578	1,560	16
	100.0	49.7	22.7	1.3	10.7	1.2	2.2	3.3	8.8	0.1
OKLAHOMA	4,789	2,920	901	58	457	49	78	93	228	5
	100.0	61.0	18.8	1.2	9.5	1.0	1.6	1.9	4.8	0.1
OREGON	2,414	982	694	26	349	42	62	62	190	6
	100.0	40.7	28.7	1.1	14.5	1.7	2.6	2.6	7.9	0.2
PENNSYLVANIA	16,645	7,547	3,730	288	2,558	136	280	402	1,670	21
	100.0	45.3	22.4	1.7	15.4	0.8	1.7	2.4	10.0	0.1
RHODE ISLAND	1,462	628	442	17	153	7	28	47	134	4
	100.0	43.0	30.2	1.2	10.5	0.5	1.9	3.2	9.2	0.3

	TOTAL	RELIGIOUS	EDUCA-TIONAL	SCIEN-TIFIC	PHILAN-THROPIC	AGRI-CULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
SOUTH CAROLINA	3,194 100.0	1,784 55.9	646 20.2	45 1.4	312 9.8	20 0.6	33 1.0	70 2.2	280 8.8	4 0.1
SOUTH DAKOTA	1,277 100.0	562 44.0	304 23.8	6 0.5	142 11.1	52 4.1	22 1.7	79 6.2	103 8.1	7 0.5
TENNESSEE	6,917 100.0	3,853 55.7	1,372 19.8	133 1.9	658 9.5	96 1.4	152 2.2	150 2.2	463 6.7	12 0.2
TEXAS	17,687 100.0	9,376 53.0	4,043 22.9	240 1.4	1,708 9.7	585 3.3	289 1.6	453 2.6	928 5.2	49 0.3
UTAH	1,546 100.0	679 43.9	456 29.5	25 1.6	146 9.4	16 1.0	41 2.7	38 2.5	129 8.3	13 0.8
VERMONT	1,120 100.0	320 28.6	468 41.8	10 0.9	156 13.9	27 2.4	8 0.7	44 3.9	78 7.0	9 0.8
VIRGINIA	6,387 100.0	2,943 46.1	1,605 25.1	133 2.1	831 13.0	100 1.6	89 1.4	155 2.4	444 7.0	20 0.3
WASHINGTON	3,677 100.0	1,530 41.6	969 26.4	41 1.1	505 13.7	32 0.9	138 3.8	93 2.5	357 9.7	8 0.2
WEST VIRGINIA	2,873 100.0	1,760 61.3	508 17.7	26 0.9	287 10.0	33 1.1	37 1.3	46 1.6	161 5.6	12 0.4
WISCONSIN	6,611 100.0	2,671 40.4	1,934 29.3	103 1.6	886 13.4	98 1.5	211 3.2	309 4.7	389 5.9	10 0.2
WYOMING	644 100.0	288 44.7	162 25.2	8 1.2	78 12.1	16 2.5	7 1.1	18 2.8	64 9.9	2 0.3
TOTAL	304,896 100.0	136,396 44.7	81,001 26.6	4,491 1.5	38,682 12.7	4,136 1.4	6,561 2.2	9,616 3.2	22,984 7.5	708 0.2

TABLE 3

QUANTITY OF ADVERTISING IN MAIL SENT BY CATEGORIES OF ORGANIZATIONS

(PERCENT OF PIECES)

		TYPE OF ORGANIZATION								
	TOTAL NONPROFIT	RELIGIOUS	EDUCA-TIONAL	SCIEN-TIFIC	PHILAN-THROPIC	AGRI-CULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
PROJECTED NUMBER OF MAIL PIECES(000,000)	10826	2832	3530	745	2675	76	75	554	311	28
PERCENT OF MAIL CONTAINING:	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.
NO ADVERTISING	72.	91.	76.	40.	64.	36.	58.	33.	76.	100.
MINIMAL ADVERTISING	4.	2.	1.	1.	5.	46.	9.	34.	1.	
MORE CONTENT THAN ADVERTISING	7.	4.	3.	9.	14.	12.	33.	5.	13.	
MORE ADVERTISING THAN CONTENT	4.	1.	8.	5.	2.	1.	*	7.	9.	*
ONLY ADVERTISING	12.	2.	12.	45.	14.	5.	*	20.	1.	

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 4

PURPOSES OF MAIL PIECES SENT BY CATEGORIES OF ORGANIZATIONS

(PERCENT OF PIECES)

		TYPE OF ORGANIZATION								
	TOTAL NONPROFIT	RELIGIOUS	EDUCATIONAL	SCIENTIFIC	PHILANTHROPIC	AGRICULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
PROJECTED NUMBER OF MAIL PIECES(000,000)	10826	2832	3530	745	2675	76	75	554	311	28
PURPOSES OF MAILING:										
MEMBERSHIP	36.	5.	54.	13.	59.	3.	32.	12.	10.	34.
SOLICITATION OF FUNDS	36.	85.	11.	27.	29.	4.	6.	8.	2.	34.
INFORMATION	62.	74.	64.	19.	54.	94.	99.	66.	98.	100.
TO SELL SOMETHING	28.	9.	24.	60.	36.	64.	41.	67.	23.	*
OTHER	*	*		*	*	*				

PERCENTAGES ADD TO OVER 100% DUE TO MULTIPLE PURPOSES OF MAILINGS.

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 5

TYPE OF MAIL ENCLOSURES
SENT BY CATEGORIES OF ORGANIZATIONS

(PERCENT OF PIECES)

		TYPE OF ORGANIZATION								
	TOTAL NONPROFIT	RELIGIOUS	EDUCATIONAL	SCIENTIFIC	PHILANTHROPIC	AGRICULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
PROJECTED NUMBER OF MAIL PIECES(000,000)	10826	2832	3530	745	2675	76	75	554	311	28
TYPE OF ENCLOSURE										
MAGAZINES/JOURNALS	13.	5.	8.	2.	18.	1.	32.	35.	81.	*
NEWSLETTER	10.	11.	8.	4.	10.	84.	30.	13.	14.	
LETTER	65.	81.	67.	52.	69.	4.	4.	25.	1.	33.
CARD	25.	50.	22.	26.	10.	6.	2.	7.	2.	10.
CATALOGUE, BROCHURE, FLYER, PAMPHLET	33.	20.	39.	49.	37.	10.	6.	35.	6.	
MERCHANDISE	6.	12.	1.	7.	5.		*	6.		
APPLICATION	21.	9.	47.	9.	11.	*	17.	5.	3.	7.
CALENDAR	*	1.	*	*	*		*	*		
RETURN ENVELOPE	62.	83.	49.	81.	67.	2.	4.	41.	2.	13.
OTHER	2.	*	1.	6.	2.	1.	28.	*	*	56.

PERCENTAGES ADD TO OVER 100% DUE TO MULTIPLE ENCLOSURES OF MAILINGS.

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 5A

TYPE OF MAIL ENCLOSURES SENT BY CATEGORIES OF ORGANIZATIONS

(PERCENT OF PIECES)

		TYPE OF ORGANIZATION								
	TOTAL NONPROFIT	RELIGIOUS	EDUCATIONAL	SCIENTIFIC	PHILANTHROPIC	AGRICULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
PROJECTED NUMBER OF MAIL PIECES(000,000)	10826	2832	3530	745	2675	76	75	554	311	28
ENCLOSED PRODUCTS	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.
UNSOLICITED GIFT PREMIUM (PENCILS, EASTER SEALS, KEY CHAINS, ETC.)	5.	11.	2.	7.	4.			6.		
ANY OTHER PRODUCT	*	*	*		1.		*	*		
NO ENCLOSED PRODUCTS	94.	89.	98.	93.	95.	100.	100.	94.	100.	100.

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 6

EXTERNAL CONTAINER OF MAIL SENT BY CATEGORIES OF ORGANIZATIONS

(PERCENT OF PIECES)

	TOTAL NONPROFIT	TYPE OF ORGANIZATION								
		RELIGIOUS	EDUCA-TIONAL	SCIEN-TIFIC	PHILAN-THROPIC	AGRI-CULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
PROJECTED NUMBER OF MAIL PIECES(000,000)	10826	2832	3530	745	2675	76	75	554	311	28
EXTERNAL CONTAINERS OF MAIL:	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.
MAGAZINES & JOURNALS	13.	5.	8.	2.	17.	1.	32.	35.	74.	*
NEWSPAPER	1.	*	*	2.	*		28.			56.
CARD	1.	*	1.	*	*	1.	1.	*	*	10.
LETTER-SIZE ENVELOPE	59.	83.	46.	56.	69.	3.	2.	25.	2.	33.
FLAT-SIZE ENVELOPE	4.	2.	5.	26.	2.		*	1.	*	
FOLDED SHEET(S)	13.	6.	18.	9.	10.	84.	35.	26.	7.	
SMALL PARCEL OR BOX	*	*	*	*	1.			*		
OTHER										
NOT AVAILABLE	10.	3.	21.	4.	1.	11.	3.	14.	17.	

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 7

PRODUCTS & SERVICES OFFERED FOR SALE IN MAIL SENT BY CATEGORIES OF ORGANIZATIONS

(Percent of Pieces Containing Any Advertising)[a]

	TYPE OF ORGANIZATION									
	TOTAL NONPROFIT	RELIGIOUS	EDUCA-TIONAL	SCIEN-TIFIC	PHILAN-THROPIC	AGRI-CULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
PROJECTED NUMBER OF MAIL PIECES(000,000) WITH ADVERTISING	2706	239	764	394	845	43	28	328	65	
PRODUCTS OR SERVICES OFFERED FOR SALE										
ADS FOR GIFT PREMIUMS (NET)	13.	26.	4.	42.	3.	*	30.	*	1.	
SERVICE PREMIUM DIRECTLY ASSOCIATED WITH ORGANIZATION (REDUCED RATE AT MUSEUM, ETC.)	1.	*	2.	2.	*			*		
SERVICE PREMIUM NOT DIRECTLY ASSOCIATED WITH ORGANIZATION	*		*					*		
MERCHANDISE PREMIUM DIRECTLY ASSOCIATED WITH ORGANIZATION BY IMPRINT, SELF-MANUFACTURE, ETC.	5.	24.	4.	5.	3.		*	*		
MERCHANDISE PREMIUM NOT DIRECTLY ASSOCIATED WITH ORGANIZATION	8.	1.	*	37.	*	*	30.	*	1.	
ALL OTHER GIFT PREMIUMS	*						*			
ADS FOR MERCHANDISE (NET)	63.	31.	44.	85.	88.	73.	77.	17.	27.	

TABLE 7

PRODUCTS & SERVICES OFFERED FOR SALE IN MAIL SENT BY CATEGORIES OF ORGANIZATIONS

(Percent of Pieces Containing Any Advertising)

	TYPE OF ORGANIZATION									
	TOTAL NONPROFIT	RELIGIOUS	EDUCATIONAL	SCIENTIFIC	PHILANTHROPIC	AGRICULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
PRODUCTS OR SERVICES OFFERED FOR SALE										
HANDMADE BY ORGANIZATION OR POPULATION IT SERVES	*	1.	1.	*	*				1.	
MERCHANDISE IS RELATED TO THE ORGANIZATION'S FUNCTION	25.	12.	30.	9.	45.	*	*	2.	22.	
IMPRINTED WITH IDENTIFYING SYMBOL OF ORGANIZATION	4.	2.	3.	13.	1.		2.	3.	*	
SUBSCRIPTION TO ORGANIZATION'S OWN MAGAZINE OR JOURNAL	14.	10.	9.	28.	17.	*	*	1.		
ANY OTHER ADS FOR MERCHANDISE (INCLUDING ANY OTHER SUBSCRIPTIONS)	27.	6.	7.	55.	35.	73.	77.	14.	4.	
ADS FOR TRAVEL SERVICES (NET)	16.	5.	12.	6.	29.	18.	87.	9.	11.	
TRAVEL TO ORGANIZATION CONFERENCE OR CONVENTION	4.	3.	8.	1.	1.	6.	*	7.	1.	
TRAVEL WITH ORGANIZATION FOR EDUCATIONAL OR CULTURAL PURPOSE	3.	1.	3.	1.	6.	*	19.	3.	11.	
TRAVEL WITH ORGANIZATION (NON-SPECIFIC PURPOSE)	1.	*	1.		*	1.	17.			

TABLE 7

PRODUCTS & SERVICES OFFERED FOR SALE IN MAIL SENT BY CATEGORIES OF ORGANIZATIONS

(Percent of Pieces Containing Any Advertising)

		TYPE OF ORGANIZATION								
	TOTAL NONPROFIT	RELIGIOUS	EDUCA-TIONAL	SCIEN-TIFIC	PHILAN-THROPIC	AGRI-CULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
PRODUCTS OR SERVICES OFFERED FOR SALE										
ALL OTHER TRAVEL SERVICES	10.	2.	1.	4.	24.	18.	68.			

TABLE 7

PRODUCTS & SERVICES OFFERED FOR SALE IN MAIL SENT BY CATEGORIES OF ORGANIZATIONS

(Percent of Pieces Containing Any Advertising)

		TYPE OF ORGANIZATION								
	TOTAL NONPROFIT	RELIGIOUS	EDUCATIONAL	SCIENTIFIC	PHILANTHROPIC	AGRICULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
PRODUCTS OR SERVICES OFFERED FOR SALE										
ADS FOR FINANCIAL SERVICES (NET)	10.	1.	2.		29.		26.	1.		
FINANCIAL SERVICES ASSOCIATED WITH ORGANIZATION	2.	1.	1.		4.		4.			
FINANCIAL SERVICES NOT ASSOCIATED WITH ORGANIZATION	10.	*	2.		29.		22.	1.		
ADS FOR INSURANCE (NET)	17.		5.	*	29.	*	55.	81.		
INSURANCE ASSOCIATED WITH ORGANIZATION	12.		3.	*	14.	*	33.	80.		
INSURANCE NOT ASSOCIATED WITH ORGANIZATION	9.		2.		27.		23.	*		
EDUCATIONAL (COURSES, (SEMINARS, ETC.) (NET)	27.	19.	38.	15.	33.	3.	27.	7.	20.	
ASSOCIATED WITH ORGANIZATION'S FUNCTION	17.	19.	38.	11.	4.	3.	27.	7.	20.	
NOT ASSOCIATED WITH ORGANIZATION'S FUNCTION	10.	*	*	4.	29.	*		*		

TABLE 7

PRODUCTS & SERVICES OFFERED FOR SALE IN MAIL
SENT BY CATEGORIES OF ORGANIZATIONS

(Percent of Pieces Containing Any Advertising)

		TYPE OF ORGANIZATION								
	TOTAL NONPROFIT	RELIGIOUS	EDUCA-TIONAL	SCIEN-TIFIC	PHILAN-THROPIC	AGRI-CULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
PRODUCTS OR SERVICES OFFERED FOR SALE										
CULTURAL (ART, BALLET, THEATRE, MUSEUM, ETC.) (NET)	4.	4.	6.	1.	4.	17.	21.	1.	6.	
ASSOCIATED WITH ORGANIZATION'S FUNCTION	4.	4.	5.	1.	3.	17.	20.		6.	
NOT ASSOCIATED WITH ORGANIZATION'S FUNCTION	*	*	*	*	1.		*	1.		
SOCIAL SERVICES (LEGAL AID, FOOD, HEALTH, ETC.) (NET)	11.	2.	2.	*	32.		5.	4.	4.	
ASSOCIATED WITH ORGANIZATION'S FUNCTION	2.	2.	2.	*	4.			1.		
NOT ASSOCIATED WITH ORGANIZATION'S FUNCTION	11.	*	2.		32.		5.	3.	4.	
ORGANIZATION FUNCTIONS (NET)	6.	12.	8.	3.	1.	6.	19.	10.	46.	
MEETINGS, PARTIES, RECEPTIONS FOR WHICH HERE IS A FEE	6.	12.	8.	3.	1.	6.	19.	10.	46.	
ALL OTHER SERVICES NOT SPECIFIED ABOVE (NET)	22.	32.	8.	7.	37.	79.	55.	18.	17.	
ASSOCIATED WITH ORGANIZATION'S FUNCTION	12.	28.	7.	6.	15.	*	50.	11.	14.	

TABLE 7

PRODUCTS & SERVICES OFFERED FOR SALE IN MAIL SENT BY CATEGORIES OF ORGANIZATIONS

(Percent of Pieces Containing Any Advertising)

		TYPE OF ORGANIZATION								
	TOTAL NONPROFIT	RELIGIOUS	EDUCA-TIONAL	SCIEN-TIFIC	PHILAN-THROPIC	AGRI-CULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
PRODUCTS OR SERVICES OFFERED FOR SALE										
NOT ASSOCIATED WITH ORGANIZATION'S FUNCTION	14.	4.	2.	4.	34.	79.	5.	7.	4.	
ADS FOR LOCAL STORES & SERVICES INCLUDING PERSONAL SERVICES (NET)	13.	2.	3.	*	32.	79.	53.	2.	4.	

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[a] Twenty-eight percent of all pieces contain advertising.

PERCENTAGES ADD TO OVER 100% DUE TO MULTIPLE CONTENTS OF MAILINGS.
BASED ON THOSE PIECES WHICH CONTAINED ANY ADVERTISING.

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

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TABLE 8

TYPES OF ADVERTISING WHICH THE COMMISSION RECOMMENDS AS BEING ELIGIBLE AND INELIGIBLE TO BE MAILED AT THIRD-CLASS NONPROFIT RATES

TYPE A ELIGIBLE	TYPE B INELIGIBLE
MERCHANDISE	
- Handmade by organization or population it serves - Merchandise is related to the organization's function - Subscription to organization's own magazine or journal	- Imprinted with identifying symbol of organization - Any other ads for merchandise (including any other subscriptions)
TRAVEL SERVICES	
	- Travel to organization conference or convention - Travel with organization for educational or cultural purpose - Travel with organization (non-specific purpose) - All other travel services
FINANCIAL SERVICES	
	- Financial services associated with organization - Financial services not associated with organization
INSURANCE SERVICES	
	- Insurance associated with organization - Insurance not associated with organization

TYPE A ELIGIBLE	TYPE B INELIGIBLE
EDUCATIONAL SERVICES	
- Associated with organization's function	- Not associated with organization's function
CULTURAL	
- Associated with organization's function	- Not associated with organization's function
SOCIAL SERVICES	
- Associated with organization's function	- Not associated with organization's function
ORGANIZATION FUNCTIONS	
- Meetings, parties, receptions for which there is a fee	
ALL OTHER SERVICES	
- Associated with organization's function	- Not associated with organization's function - Ads for local stores and services

TABLE 9

TYPE OF ADVERTISING SENT BY CATEGORIES OF ORGANIZATIONS[a]

(PERCENT OF PIECES)

	TOTAL NONPROFIT	TYPE OF ORGANIZATION								
		RELIGIOUS	EDUCATIONAL	SCIENTIFIC	PHILANTHROPIC	AGRICULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
PROJECTED NUMBER OF MAIL PIECES(000,000)	10826	2832	3530	745	2675	76	75	554	311	28
PERCENT OF MAIL CONTAINING:										
NO ADVERTISING	72.	90.	76.	40.	64.	36.	58.	33.	76.	100.
ADS FOR GIFT PREMIUMS ONLY	1.	1.	1.	2.	*			*	*	
ANY TYPE A ADVERTISING	21.	7.	21.	31.	31.	17.	21.	31.	16.	*
ONLY TYPE A ADVERTISING	14.	6.	16.	23.	19.	13.	1.	3.	8.	
ANY TYPE B ADVERTISING	13.	2.	7.	35.	16.	51.	40.	60.	15.	*
ONLY TYPE B ADVERTISING	6.	1.	2.	27.	4.	47.	20.	32.	8.	
TYPE A AND B	7.	1.	5.	7.	12.	4.	20.	27.	8.	*

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[a] See Table 8 for definition of "Type A" and "Type B" advertising.

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 10

VARYING TYPES OF ADVERTISING CONTENT IN DIFFERENT CONTAINERS OF MAIL

(PERCENT OF PIECES)

	TOTAL NONPROFIT	TYPE OF CONTAINER								
		MAGAZINES /JOURNALS	NEWSPAPER	CARD	LETTER SIZE ENVELOPE	FLAT-SIZE ENVELOPE	FOLDED SHEET(S)	SMALL BOX	OTHER	OTHER/ NOT AVAILABLE
PROJECTED NUMBER OF MAIL PIECES(000,000)	10826	1373	80	61	6385	469	1367	41		1050
PERCENT OF MAIL CONTAINING:										
NO ADVERTISING	72.	32.	39.	89.	89.	13.	41.	89.		86.
ADS FOR GIFT PREMIUMS ONLY	1.			2.	1.	1.	1.			1.
ANY TYPE A ADVERTISING	21.	58.	48.	7.	9.	50.	42.	8.		8.
ONLY TYPE A ADVERTISING	14.	16.	2.	7.	8.	44.	35.	8.		8.
ANY TYPE B ADVERTISING	13.	50.	59.	1.	2.	42.	22.	3.		5.
ONLY TYPE B ADVERTISING	6.	8.	14.	1.	2.	35.	15.	3.		4.
TYPE A AND B	7.	42.	46.	*	1.	6.	7.			1.

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 11

QUANTITY OF ADVERTISING IN MAIL SENT BY SMALL, MEDIUM AND LARGE MAILERS[a]

(PERCENT OF PIECES)

		PROJECTED NUMBER OF MAIL PCS.		
	TOTAL NONPROFIT	UNDER 100,000	100,000-999,999	1,000,000 OR MORE
PROJECTED NUMBER OF MAIL PIECES(000,000)	10826	553	1312	8961
PERCENT OF MAIL CONTAINING:	100.	100.	100.	100.
NO ADVERTISING	72.	53.	67.	74.
MINIMAL ADVERTISING	4.	7.	4.	4.
MORE CONTENT THAN ADVERTISING	7.	21.	8.	6.
MORE ADVERTISING THAN CONTENT	4.	9.	10.	3.
ONLY ADVERTISING	12.	11.	10.	13.

[a] Categorized by annual volume

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 12

PURPOSES OF MAIL PIECES SENT BY SMALL, MEDIUM AND LARGE MAILERS[a]

(PERCENT OF PIECES)

		PROJECTED NUMBER OF MAIL PCS.		
	TOTAL NONPROFIT	UNDER 100,000	100,000- 999,999	1,000,000 OR MORE
PROJECTED NUMBER OF MAIL PIECES(000,000)	10826	553	1312	8961
PURPOSES OF MAILING:				
MEMBERSHIP	36.	13.	13.	41.
SOLICITATION OF FUNDS	36.	26.	27.	37.
INFORMATION	62.	82.	82.	58.
TO SELL SOMETHING	28.	44.	32.	26.
OTHER	*	*	*	*

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[a] Categorized by annual volume

PERCENTAGES ADD TO OVER 100% DUE TO MULTIPLE PURPOSES OF MAILINGS.

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 13

TYPE OF MAIL ENCLOSURES SENT BY SMALL, MEDIUM AND LARGE MAILERS[a]

(PERCENT OF PIECES)

		PROJECTED NUMBER OF MAIL PCS.		
	TOTAL NONPROFIT	UNDER 100,000	100,000-999,999	1,000,000 OR MORE
PROJECTED NUMBER OF MAIL PIECES(000,000)	10826	553	1312	8961
TYPE OF ENCLOSURE				
MAGAZINES/JOURNALS	13.	5.	21.	12.
NEWSLETTER	10.	46.	23.	6.
LETTER	65.	26.	24.	73.
CARD	25.	15.	11.	28.
CATALOGUE, BROCHURE, FLYER, PAMPHLET	33.	25.	32.	33.
MERCHANDISE	6.	*	2.	6.
APPLICATION	21.	9.	10.	24.
CALENDAR	*	*	1.	*
RETURN ENVELOPE	62.	19.	29.	69.
OTHER	2.	5.	5.	1.

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[a] Categorized by annual volume

PERCENTAGES ADD TO OVER 100% DUE TO MULTIPLE ENCLOSURES OF MAILINGS.

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 14

TYPE OF ADVERTISING[a]
SENT BY SMALL, MEDIUM AND LARGE MAILERS[b]

(PERCENT OF PIECES)

		PROJECTED NUMBER OF MAIL PCS.		
	TOTAL NONPROFIT	UNDER 100,000	100,000-999,999	1,000,000 OR MORE
PROJECTED NUMBER OF MAIL PIECES(000,000)	10826	553	1312	8961
PERCENT OF MAIL CONTAINING:				
NO ADVERTISING	72.	53.	67.	73.
ADS FOR GIFT PREMIUMS ONLY	1.	*	2.	1.
ANY TYPE A ADVERTISING	21.	39.	27.	19.
ONLY TYPE A ADVERTISING	14.	30.	18.	12.
ANY TYPE B ADVERTISING	13.	16.	12.	13.
ONLY TYPE B ADVERTISING	6.	7.	3.	6.
TYPE A AND B	7.	8.	9.	7.

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[a] See Table 8 for definition of "Type A" and "Type B" advertising.

[b] Categorized by annual volume

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 15

HOW POSTAGE PAID IN MAILINGS SENT BY CATEGORIES OF ORGANIZATIONS

(PERCENT OF PIECES)

	TOTAL NONPROFIT	TYPE OF ORGANIZATION								
		RELIGIOUS	EDUCATIONAL	SCIENTIFIC	PHILANTHROPIC	AGRICULTURAL	LABOR	VETERANS	FRATERNAL	POLITICAL
PROJECTED NUMBER OF MAIL PIECES(000,000)	10826	2832	3530	745	2675	76	75	554	311	28
HOW POSTAGE PAID	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.
PRE-CANCELLED STAMPS	2.	5.	2.	*	1.	*	*			4.
METER	13.	26.	12.	1.	9.	8.	1.	1.	*	3.
PERMIT IMPRINT	81.	68.	84.	95.	85.	92.	99.	93.	95.	68.
NOT ANSWERED	3.	1.	2.	3.	5.	*		7.	5.	25.

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 16

RELATIONSHIP OF ADVERTISING TO OTHER PURPOSES OF MAILINGS

(PERCENT OF PIECES)

		PURPOSE			
OTHER PURPOSE OF MAILING:	GRAND TOTAL	MEMBER -SHIP	SOLICI- TATION	INFORM- ATION	ADVER- TISING
MEMBERSHIP	36.	100.	16.	35.	21.
SOLICITATION OF FUNDS	36.	16.	100.	39.	9.
INFORMATION	62.	60.	69.	100.	54.
ADVERTISING	28.	17.	7.	24.	100.
OTHER	*				

PERCENTAGES ADD TO OVER 100% DUE TO MULTIPLE PURPOSES OF MAILINGS.

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 17

AMOUNT OF TOTAL ADVERTISING IN NON-PROFIT MAIL WITH VARYING PURPOSES

(PERCENT OF PIECES)

		PURPOSE			
	GRAND TOTAL	MEMBER -SHIP	SOLICI- TATION	INFORM- ATION	ADVER- TISING
PERCENT OF MAIL CONTAINING:	100.	100.	100.	100.	100.
NO ADVERTISING	72.	83.	93.	75.	
MINIMAL ADVERTISING	4.	3.	3.	7.	15.
MORE CONTENT THAN ADVERTISING	7.	10.	3.	11.	25.
MORE ADVERTISING THAN CONTENT	4.	5.	1.	7.	16.
ONLY ADVERTISING	12.				44.

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 18

AMOUNT OF TOTAL ADVERTISING IN NON-PROFIT MAIL WITH DIFFERENT TYPES OF ADVERTISING[a]

(PERCENT OF PIECES)

	NO ADVERTISING	ADS FOR GIFT PREMIUMS ONLY	ANY TYPE A ADVERTISING	ONLY TYPE A ADVERTISING	ANY TYPE B ADVERTISING	ONLY TYPE B ADVERTISING	BOTH TYPE A & B ADVERTISING
PERCENT OF MAIL CONTAINING:		100.	100.	100.	100.	100.	100.
MINIMAL ADVERTISING		26.	14.	10.	18.	13.	22.
MORE CONTENT THAN ADVERTISING		40.	26.	14.	37.	24.	48.
MORE ADVERTISING THAN CONTENT		29.	16.	14.	16.	12.	19.
ONLY ADVERTISING		5.	44.	61.	29.	51.	11.
NO ADVERTISING							

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[a] See Table 8 for definition of "Type A" and "Type B" advertising.

BASED ON THOSE PIECES WHICH CONTAINED ANY ADVERTISING.

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

TABLE 19

TYPE OF ADVERTISING[a]

(PERCENT OF PIECES)

PERCENT OF MAIL CONTAINING:	ANY TYPE A ADVERTISING	ANY TYPE B ADVERTISING
NO ADVERTISING		
ADS FOR GIFT PREMIUMS ONLY		
ANY TYPE A ADVERTISING	100.	55.
ONLY TYPE A ADVERTISING	66.	
ANY TYPE B ADVERTISING	34.	100.
ONLY TYPE B ADVERTISING		45.
TYPE A AND B	34.	55.

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[a] See Table 8 for definition of "Type A" and "Type B" advertising.

SOURCE: POSTAL RATE COMMISSION NON-PROFIT MAIL STUDY JUNE, 1986.
BASED ON CODING OF ACTUAL MAIL PIECES AND POSTAL FORMS.

Second-Class Study

I. Description of the Study

A study of second-class mail was undertaken by the Commission for two reasons: 1) to determine the use of advertising by nonprofit second-class mailers and 2) to determine the characteristics of the mailers who were using in-county preferred rates before and after the February 16, 1986 change in in-county eligibility requirements. The Commission determined that the necessary information was available on second-class mailer forms retained at the local post office level. A randomly-selected sample of these forms was collected via a field survey, keypunched, and processed to obtain the tabular summaries presented in this appendix.

To assist in this survey effort, the Commission hired a statistical sampling consultant, Mr. Steven Heeringa, who is currently the Director of the Sampling Section at the Survey Research Center of the University of Michigan. Mr. Heeringa has extensive experience in the intricacies of Postal Service sampling; for example, he designed the sample used in the Household and Nonhousehold Mailstream Studies conducted on behalf of the Postal Service between 1978 and 1980. Sample selection, keypunching, and data processing for the second-class survey data were performed at the Survey Research Center under the direction of Mr. Heeringa.[1] As with the other efforts in this preferred rate study, the Commission staff was heavily involved with all phases of the second-class survey.

To ensure that statistically representative data would be obtained in an efficient manner, a two-stage sample design was employed. In the first stage, a stratified random sample of 50 post offices was selected based on the size of the post office as measured by its annual second-class postage. In the second stage of the sample, a random sample of 1,500 nonprofit and 1,500 regular rate publications was selected from the set of publications whose original entry point was one of the 50 offices selected in the first stage. For the purpose of selecting this sample of publications a USPS computer tape containing name and post office information for approximately 35,500 publications was used.

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[1] A more technical description of these activities prepared by Mr. Heeringa has been placed in the Commission's Docket Room.

A list of the publications selected from each of the 50 post offices was sent in April, 1986 to the Postmaster/MSC Manager of each office along with a request (signed by the Deputy Postmaster General) to return copies of the following three forms for each listed publication to USPS Headquarters: 1) the most recent Statement of Ownership, Management, and Circulation; 2) the most recent Statement of Mailing; and 3) a Statement of Mailing dated prior to the in-county eligibility change (February 16, 1986). The forms returned from each office were batched at Postal Service Headquarters and forwarded to the Survey Research Center for keypunching and data processing during late May and early June of 1986.

From the Statement of Ownership, Management, and Circulation form for each publication the following data items were keypunched: 1) frequency of publication, 2) average total distribution per issue (during the past 12 months), and 3) average mail distribution per issue. In addition, the following items were keypunched from the most recent Statement of Mailing: 1) weight of a single piece, 2) advertising percentage, 3) advertising weight by zone, 4) nonadvertising weight, 5) outside-county volumes by presort level, and 6) in-county volumes by presort level. Only the in-county and total volumes were keypunched from the second (prior to the in-county eligibility change) Statement of Mailing. Two additional items provided by local post office personnel were also keypunched: 1) the publication type, i.e., newspaper, newsletter, or magazine; and 2) for nonprofit publications, the nonprofit category (religious, educational, etc.).

Data for 2,715 (approximately eight percent of all publications) of the 3,000 sampled publications have been received, keypunched, and processed. Data for the remaining 285 publications could not be obtained due to the absence of one or more of the required USPS forms at the post offices (in some cases because the publication no longer exists).

Based on several validity checks with data from the routine reporting systems of the Postal Service, it appears that the survey data are statistically valid, i.e., representative of the population of second-class publications. In particular, estimates of total annual second-class volume from USPS reporting systems and the second-class survey agreed to within six percent, while estimates of annual in-county volume agreed to within three percent. Since the sample size is relatively large, the standard errors should be reasonably small for tables involving moderately large subsets of publications. For example, the relative error for table entries in which 50 percent of all second-class publications are represented should be in the neighborhood of one to two percent.

II. Summary of Survey Results

From the survey results it is possible to develop estimates of the number of publications and the total volume in various publication categories. Table 1 below displays these figures in percentage terms for the various categories of nonprofit publications, while Table 2 provides the actual number of publications and total volumes for the publications eligible for in-county rates under both the old and new eligibility criteria.[1]

It can be seen from Table 1 that religious and educational publications account for more than half of the nonprofit publications as well as the nonprofit volume, while scientific and labor publications account for another 25 percent of the publications and the volume. Examination of Table 2 reveals that about 44 percent of the 35,563 second-class publications used in-county rates under the old eligibility criteria; these publications account for about 49 percent of total second-class volume. Under the new eligibility criteria, it is estimated that slightly more than 2,000 of these publications with 19 percent of total second-class volume will not be eligible for in-county rates. The 225 million copies of excluded in-county volume should lower the in-county portion of the preferred rate subsidy by about $9 million. Table 2 also shows that if the new eligibility criteria were used together with a ceiling of 20,000 in-county copies per mailing, another 350 million pieces of in-county volume would be excluded, with a subsidy value of about $14 million.

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[1] As discussed below, estimates of newly eligible in-county volume are approximate.

Table 1. Distribution of Publications and Total Annual Volume for Various Nonprofit Publication Categories

Nonprofit Category	% of Publications	% of Total Volume
Religious	37.6	30.5
Educational	25.4	22.4
Scientific	12.0	8.3
Philanthropic	.7	.6
Agricultural	1.5	1.3
Labor	12.9	19.5
Veterans	.5	.3
Fraternal	4.2	2.8
Other & Unknown	5.2	14.3
All Nonprofit	100.0 (9,000 pubs.)	100.0 (3,448 mil.)

Table 2. Number of Publications, Total Volume, and In-County Volume by In-County Eligibility Categories

In-County Category	No. of Pubs.	Total Volume	In-County Volume
Formerly Did Not Use	20,108	5,468	0
Formerly Did Use	15,455	5,339	1,895
- Eligible - New Criteria	13,434	3,265	1,670
- Ineligible - New Criteria	2,020	2,073	225
- Eligible - New Criteria with 20,000-Copy Ceiling	13,434	3,265	1,221
- Ineligible - New Criteria with 20,000-Copy Ceiling	2,020	2,073	574

III. Introduction to Second-Class Tables

The tables form the second-class survey are organized into three different sets, designated "A", "B", and "C". The first set is intended primarily to provide a breakdown of nonprofit second-class publications into the various nonprofit categories. The following categories authorized under section 423.121 of the Domestic Mail Manual (DMM) are displayed in the "A" series of tables: religious, educational, scientific, philanthropic, agricultural, labor, veterans, and fraternal. Also included in the "A" series of tables are categories for classroom (DMM 423.2), science of agriculture (DMM 423.3), and special publications (DMM 423.3); the sample size for these categories was generally too small to draw valid inferences from the data.

The second series of tables ("B") provides a breakdown of all publications into four categories based on 1) whether they have nonprofit status or not, and 2) whether they mailed any copies at the in-county rate before the eligibility change or not. The third set ("C") provides a breakdown of publications who previously used in-county rates into four categories based on 1) whether they have nonprofit status or not, and 2) whether or not they are eligible for in-county based on the new criteria.

It was not possible to obtain survey data sufficient to determine the revised in-county eligibility or lack thereof for all publications.[1] The problem in such cases was that the Postal Service does not yet know how much of a publication's non-mailed distribution is in-county. For purposes of the "C" series of tables, the assumption was made in some cases that the non-mailed copies had the same in-county percentage as the mailed copies. For most (about 90 percent) of the publications, knowledge of the publication's in-county mail volume and its total distribution was sufficient to make the eligibility determination without resorting to this assumption.

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[1] A comparison of total in-county volume from Statements of Mailing submitted before and after the eligibility change revealed no significant difference. The survey data appear to be representative of in-county usage before the eligibility change.

Each series of tables contains the following eight tabular displays; some notes regarding certain tables are also provided:

1. Distribution by type of publication -- newspaper, newsletter, and magazine. Due to a misunderstanding of the data collection instructions, the newsletter category is underreported.
2. Distribution by frequency of publication.
3. Distribution by annual volume size.
4. Distribution by advertising percentage. The "0-9 percent" category is somewhat overreported due to the fact that publications whose mail distribution is 100 percent in-county do not have to report their advertising percentage; these publications are included with those who do not report their advertising percentage because it is less than 10 percent.
5. Distribution by distance -- in-county, zones 1-8, and foreign. This table includes a category for "zone undetermined", since publications with less than 10 percent advertising need not report their zone distribution.
6. Distribution by presort level. This table includes categories for foreign and classroom copies, where presort levels are not relevant.
7. Distribution by volume per issue size.
8. Distribution by type of county -- large metro area: central, suburban, or major satellite center; other metro area; non-metro area.

One final table (C9) was included for the purpose of displaying total in-county volumes by in-county volume per mailing size for three different in-county eligibility criteria: the old, new, and new with a ceiling of 20,000 in-county copies per mailing.

The first two lines of each table display information on: 1) Number of Mailers Represented -- the estimated number of mailers in the entire population of second-class publications included in a particular column category, and 2) Projected Annual Volume -- the estimated annual volume of the publications included in a particular column category. The last line of each table shows the actual number of sampled publications in a particular column category. For example, it can be seen in the "Educational" column of Table A1 that there are an estimated 2,290 educational publications with an estimated annual volume of 771 million copies, and that the actual number of sampled educational publications was 444. The remaining rows of each table display a percentage breakdown of the Projected Annual Volume for each column; using the above example, it can be seen from the "Magazine" row that 94.7 percent of 771 million copies are educational magazines.

In the "B" and "C" series of tables, it should be noted that the Projected Annual Volume figure refers to the total volume of publications that fit the various column categories, not just the in-county volume. For example, it can be seen in Table B1 that the projected annual volume of nonprofit publications that (formerly) used in-county rates is 1,798 million (or 1.798 billion) copies.

IV. Analysis of Second-Class Tables

A. Type of Publication. Tables A1, B1, and C1 display data on the percentage of various publication categories that USPS personnel identified as newspapers, newsletters, and magazines. As mentioned above, the newsletter category is underreported; for purposes of analyzing these tables, newsletters will be considered to be in the newspaper category. From Table A1, it is clear that magazines are the dominant type with almost two-thirds of the volume for both nonprofit and general (regular rate) publications. Of the nonprofit publication categories, educational, scientific, philanthropic, and agricultural publications are virtually all magazines; only fraternal publications have more newspapers than magazines.

Turning to Table B1, it can be seen from the two "All Publications" columns that publications using in-county rates under the old eligibility criteria have a much higher percentage of newspapers (52.5 percent, including newsletters) than publications not using in-county (20.1 percent). This tendency applies also to nonprofit and general publications considered individually. It can be seen from the "All Publications - Ineligible" column of Table C1, however, that of the volume of publications using in-county rates under the old eligibility criteria (2,073 million), more newspapers than magazines become ineligible for in-county rates under the new rules (60.6 percent versus 39.4 percent).

B. Frequency of Publication. In analyzing this series of tables it will be assumed that the "4-6" issues/year row represents quarterly publications, the "7-15" row represents monthly publications, the "16-40" row represents bi-monthlies, the "41-60" row represents weeklies, and the sum of the "61-150" and "150+" row represents dailies. Table A2 shows that approximately 49 percent of total second-class volume are quarterly and monthly publications, 8 percent are bi-monthlies, 19 percent are weeklies, and 25 percent are dailies. With the exception of the fraternal and "Can't tell" nonprofit categories, these results indicate that there are virtually no dailies and few weeklies among nonprofit publications.

It can be seen by comparing the "In County" and "Not In County" columns for all, nonprofit, and general publications in Table B2 that the publications that used in-county rates under the old eligibility criteria have a much higher percentage of weekly and daily frequencies than the non-users of in-county rates. For example, in the "All Publications" section, dailies and weeklies account for 68.1 percent of the in-county user volume but only 29.2 percent of the non-user volume. Table C2 shows that this tendency becomes more pronounced for publications eligible under the revised criteria; /1.6 percent of the volume of these publications have frequencies greater than or equal to weeklies.

C. Annual Volume Size. Examination of Table A3 shows that the bulk of nonprofit and general publication volume (about 70 percent for each category) is accounted for by publications with annual mail volumes greater than one million copies. From Table B3 it can be seen that fraction of volume in the greater than one million category is somewhat greater for non-users of in-county rates (old criteria) than for in-county rate users (73.7 percent versus 67.1 percent for the "All Publication" category). The effect of the new in-county eligibility criteria can be seen in Table C3; for the publications surviving the eligibility change, only 57.6 percent of their volume is in the greater than one million category.

D. Advertising Percentage. Table A4 shows that about 44.2 percent of all general publication volume contains only minimal advertising ("0-9" percent); for nonprofit publications, the percentage can be calculated to be 55.4 percent. Of the nonprofit publications, the categories with the least advertising are scientific, philanthropic, and labor. From Table B4 it can be seen that publications using in-county rates under the former eligibility criteria have a significantly higher advertising percentage than non-users; for example, 75.5 percent of in-county user volume ("All Publications") has more than minimal advertising, while only 37.5 percent of non-user volume has more than minimal advertising. This dichotomy is even more pronounced for general publications (84.1 percent for in-county users, 40.0 percent for non-users). Table C4 indicates that the eligibility change does not have a significant effect on the levels of advertising; the advertising percentage for formerly-eligible in-county rate users shown in the first column are reasonably close to the percentages for newly-eligible users shown in the second column.

E. Distance Distribution. In Tables A5, B5, and C5, it should be noted that publications with minimal advertising are not required to pay the zoned advertising rates, and so their zone distribution for out-of-county mail is not reported. It can be seen from the "Zone Undetermined" row of Table A5 that 35.6 percent of total second-class volume falls into this category. For the portion of total second-class volume that is not in this undetermined category (64.4 percent), it can be seen that 69 percent (18.0 percent plus 26.5 percent divided by 64.4 percent) is either in-county or Zone 1 and 2 mail. This concentration of volume in nearby areas is even more pronounced for philanthropic and agricultural nonprofit organizations, for which the in-county plus Zone 1 and 2 percentages of non-"Zone Undetermined" volume are 78 percent. It is also apparent from Table A5 that while only 2.7 percent of total second-class volume has a foreign destination, the educational and scientific publications have a much higher foreign circulation -- 21.5 percent and 9.9 percent, respectively.

Turning to the in-county mail volume percentage figures, it can be computed from Table B5 that about 17 percent of both general and nonprofit publication volumes are mailed at in-county rates. This percentage is significantly higher for religious and philanthropic publications. By splitting the population of publications into users and non-users of in-county rates under the old eligibility criteria, Table B5 shows that the in-county percentage of total volume for the "user" group is increased to about 35 percent for both general and nonprofit publications. The new eligibility criteria serve to further increase this percentage to 52 percent for (newly) eligible general and nonprofit in-county users, as shown by Table C5.

Table C5 can also be used to estimate the amount of in-county volume under the former eligibility criteria that would be eliminated under the new eligibility rules, for both nonprofit and general publications. The "In-County Ineligible" row of the "Nonprofit Ineligible" column shows that 6.5 percent of 604 million copies, or 40 million in-county copies would be eliminated from nonprofit publications; the corresponding figure for general publications is 12.5 percent of 1,468 million, or 184 million copies.

F. Presort Distribution. Examination of Table A6 shows that only about 11 percent of both general and nonprofit publication volume is presorted to the carrier-route level (in-county and outside-county). This percentage is significantly higher for religious (23 percent) and agricultural (27 percent) publications. It can be seen from Table B6 that the population of nonprofit in-county users under the former eligibility criteria has a carrier-route volume percentage of only 7 percent, while the corresponding figure for regular publications using in-county rates is a much higher 16 percent. Table C6 shows that restricting the in-county eligibility criteria has little effect on the carrier-route percentages of (newly) eligible users.

G. Volume Per Mailing Size. For purposes of analyzing Tables A7, B7, and C7, the two volume/mailing size categories "1-100" and "1,001-10,000" will be considered to represent "small" publications, the "10,001-100,000" category will represent "medium" publications, and the two categories "100,001-1,000,000" and ">1,000,000" will represent "large" publications. From A7, it can be seen that the breakdown of total second-class volume into these size categories is as follows: 14 percent from small publications, 47 percent from medium publications, and 39 percent from large publications. Large publications are more predominate in educational (59 percent), scientific (59 percent), philanthropic (54 percent), and labor (73 percent) publications.

It can be seen from Table B7 that the population of publications that did not use in-county rates under the old eligibility criteria tend to have a greater percentage of large publication volume than the in-county rate users. For nonprofit publications, 61.6 percent of the volume of non-users of in-county rates was from large publications versus 43.0 percent for in-county users. For general publications, the non-user large publication percentage is 42.2 percent versus 14.1 percent for in-county users. Examination of Table C7 shows that the change in eligibility criteria did not have a major effect on the size distribution of (newly) eligible in-county users compared with the former in-county users.

H. County Categories. For purposes of developing information on second-class use by type of county, the identity of the county of each of the 50 sampled post offices used in this survey was determined and classified according to the following Census criteria: 1) Large Metropolitan Area - Metropolitan Statistical Area (MSA) with at least 1,000,000 population, 2) Other Metropolitan Area - MSA with less than 1,000,000 population, and 3) Non-Metropolitan Area - area that does not include an MSA. The Large Metropolitan Area category was further subdivided into Central City, Suburban, and Major Satellite Center categories. Because the original sample of 50 post offices was not drawn with these Census categories in mind, there were few sample post offices in the Non-Metropolitan Area category; survey results for this category, therefore, have higher standard errors than the other county categories.

It can be seen from Table A8 that the majority (about 87 percent) of both nonprofit and general publication volume originates in Large Metropolitan Areas. This large metropolitan area percentage is considerably lower for religious (68 percent), veterans (42 percent), and fraternal (69 percent) publications. Table B8 shows that the large metropolitan area percentage for nonprofit publications is roughly the same (about 85 percent) for former in-county rate users and non-users. For general publications, however, the former in-county rate users have a much lower large metropolitan area percentage (70 percent) than the non-users (97 percent). The results shown in Table C8 indicate that the newly eligible nonprofit in-county rate users will have a large metropolitan area percentage of about 83 percent, while the comparable figure for general publications is 80 percent.

I. In-County Volume Per Mailing Size. Table C9 has a different format than all other tables in this appendix. Instead of percentage distributions of total publication volume for various categories of publications, this table presents the number of publications, total (former) annual in-county volume for various categories of publications, and the total in-county volume that would be excluded if a ceiling of 20,000 in-county pieces was set for each mailing.

This table shows that 68 percent (1291/1895) of former in-county volume was provided by publications with less than 20,000 in-county pieces per mailing, 14 percent was provided by publications with 20,001-50,000 pieces per mailing, and 18 percent by publications with more than 50,000 pieces per mailing. Under the new eligibility criteria, these percentages change as follows: less than 20,000 - 64 percent; 20,001-50,000 - 16 percent; and over 50,000 - 20 percent.

Virtually all the excluded in-county volume of 225 million pieces under the new eligibility requirements comes from the less than 20,000 pieces per mailing category. This seems reasonable, since the publications with larger in-county volumes would be more likely to meet the new eligibility criteria requiring that the in-county portion of total distribution be greater than 50 percent. It can be seen from the "Volume > 20,000/Mailing" column, however, that the effect of the 20,000 per mailing ceiling falls most heavily on the publications with large in-county circulations. Of the 352 million in-county pieces excluded by this ceiling, 72 percent comes from the greater than 50,000 per mailing category, while the remaining 28 percent comes from the 20,001-50,000 category.

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Table B1 Distribution of Second Class Mail Volume By: Profit/Nonprofit Category; In-County Use Status; and Type of Publication

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Table A5 Distribution of Second Class Mail Volume By: Type of Organization and Distance Distribution

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Table A6 Distribution of Second Class Mail Volume By: Type of Organization and Pre-Sort Distribution

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Table B7 Distribution of Second Class Mail Volume By: Mailer's Profit/Nonprofit Category; In-County Use Status; and Copies Per Mailing

Table C7 Distribution of Second Class Mail Volume By: Non-Profit Status; In-County Eligibility Category; and Number of Copies Per Mailing

Table A8 Distribution of Second Class Mail Volume By: Urban/Rural Category

Table B8 Distribution of Second Class Mail Volume By: Mailer's Profit/Nonprofit Category; In-County Use Status; and Urban/Rural Category

Table C8 Distribution of Second Class Mail Volume By: Non-Profit Status; In-County Eligibility Category; and Urban/Rural Category

Table C9 Distribution of In-County Mail Volume By: Number of In-County Pieces Per Mailing and Mailer Eligibility Under New In-County Rules (Volume estimates are expressed in Millions of pieces)

Table A1: Distribution of Second Class Mail Volume By: Type of Organization and Type of Publication

	Total	Gen. Publ.	Nonprofit Publications										
			Rel.	Educ.	Scient.	Phil.	Agri.	Lab.	Vet.	Frat.	Class.	Sci. of Agri.	Spec. Publ.	Can't tell
Number of Mailers Represented	35563	26563	3383	2290	1083	62	134	1160	46	377	5	21	46	392
Projected Annual Volume (in millions)	10807	7360	1051	771	287	21	44	671	10	97	1	25	35	436
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Newspapers	31.7	36.7	35.7	5.3	0.0	0.0	0.0	26.6	16.1	51.9	0.0	0.0	7.3	0.3
Newsletters	0.3	0.4	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Magazines	68.7	62.6	64.2	94.7	100.0	100.0	100.0	73.4	83.9	48.1	100.0	100.0	92.7	99.7
Don't Know	0.2	0.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Sample Size	2709	1016	687	458	208	14	31	125	12	75	1	4	8	70

Table B1: Distribution of Second Class Mail Volume By: Profit/Nonprofit Category; In-County Use Status; and Type of Publication

	All Publications			Nonprofit		General	
	Total	In County	Not in County	In County	Not in County	In County	Not in County
Number of Mailers Represented	35563	15455	20108	4853	4147	10602	15961
Projected Annual Volume (in millions)	10807	5339	5468	1798	1690	3541	3778
Total	100.0	100.0	100.0	100.0	100.0	100	100.0
Newspapers	31.7	51.7	20.1	31.0	13.6	61.5	22.8
Newsletters	0.3	0.8	0.0	0.1	0.0	1.1	0.0
Magazines	67.8	47.5	79.5	68.8	86.4	37.4	76.7
Don't Know	0.2	0.0	0.4	0.1	0.0	0.0	0.5
Sample Size	2716	1358	1358	924	776	434	582

Table C1: Distribution of Second Class Mail Volume by: Non-Profit Status; New In-County Eligibility Category; and Type of Publication*

		All Publications		Nonprofit		General	
	Total	Eligible	Ineligible	Eligible	Ineligible	Eligible	Ineligible
Number of Mailers Represented	15455	13434	2020	4158	695	9276	1325
Projected Annual Volume (in millions)	5339	3265	2073	1193	604	2072	1468
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Newspapers	51.7	46.9	59.0	23.7	44.3	59.0	64.9
Newsletters	0.8	0.2	1.6	0.1	0.2	0.4	2.1
Magazines	47.5	52.8	39.4	76.3	55.3	40.6	32.9
Don't Know	0.0	0.0	0.0	0.1	0.1	0.0	0.1
Sample Size	1366	1170	188	790	134	380	54

*Data for In-County mail users

Table A2: Distribution of Second Class Mail Volume By: Type of Organization and Frequency of Publication

			Nonprofit Publications											
	Total	Gen. Publ.	Rel.	Educ.	Scient.	Phil.	Agri.	Lab.	Vet.	Frat.	Class.	Sci. of Agri.	Spec. Publ.	Can't tell
Number of Mailers Represented	35563	26563	3383	2290	1083	62	134	1160	46	377	5	21	46	392
Projected Annual Volume (in millions)	10807	7360	1051	771	287	21	44	671	10	97	1	25	35	436
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
<4 issues/year	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100.0	0.0	0.0
4-6	6.9	5.7	7.0	15.9	9.9	63.8	2.7	7.4	32.8	17.7	0.0	0.4	54.2	4.4
7-15	42.0	40.5	17.8	71.2	59.0	33.6	78.0	73.4	67.2	29.2	0.0	99.6	7.3	30.4
16-40	7.6	5.7	21.5	5.1	1.3	0.0	13.3	9.6	0.0	9.9	0.0	0.0	38.5	4.5
41-60	18.6	15.4	53.8	7.4	29.9	2.5	6.0	9.6	0.0	20.3	100.0	0.0	0.0	3.1
61-150	0.6	0.9	0.0	0.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
150+	24.3	31.7	0.0	0.1	0.0	0.0	0.0	0.0	0.0	22.9	0.0	0.0	0.0	57.6
Sample Size	2709	1016	687	458	208	14	31	125	12	75	1	4	8	70

Table B2: Distribution of Second Class Mail Volume By: Profit/Nonprofit Category; In-County Use Status; and Frequency of Publication

		All Publications		Nonprofit		General	
	Total	In County	Not in County	In County	Not in County	In County	Not in County
Number of Mailers Represented	35563	15455	20108	4853	4147	10602	15961
Projected Annual Volume (in millions)	10807	5339	5468	1798	1690	3541	3778
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
1-3	0.0	0.0	0.0	0.0	0.0	0.0	0.0
4-6 issues/year	6.9	8.5	6.1	7.5	11.0	8.9	4.0
7-15	42.0	17.6	56.1	28.8	55.6	12.3	56.3
16-40	7.6	5.8	8.6	14.1	10.3	1.9	7.9
41-60	18.6	26.2	14.2	32.5	22.0	23.3	11.0
61-150	0.6	1.5	0.1	0.1	0.1	2.3	0.1
150+	24.3	40.4	14.9	17.1	1.0	51.3	20.8
Sample Size	2716	1358	1358	924	776	434	582

Table C2: Distribution of Second Class Mail Volume By: Non-Profit Status; and In-County Eligibility Category; and Frequency of Publication*

		All Publications		Nonprofit		General	
	Total	Eligible	Ineligible	Eligible	Ineligible	Eligible	Ineligible
Number of Mailers Represented	15455	13434	2020	4158	695	9276	1325
Projected Annual Volume (in millions)	5339	3265	2073	1193	604	2072	1468
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
1-3	0.0	0.0	0.0	0.0	0.0	0.0	0.0
4-6 issues/year	8.5	10.0	6.1	4.9	12.2	12.7	3.6
7-15	17.6	12.7	25.1	20.3	44.3	8.8	17.3
16-40	5.8	5.6	6.0	10.2	21.0	3.2	0.0
41-60	26.2	33.6	14.9	38.0	22.4	31.3	11.9
61-150	1.5	0.9	2.5	0.0	0.1	1.4	3.6
150+	40.4	37.1	45.3	26.5	0.1	42.6	63.6
Sample Size	1358	1170	188	790	134	380	54

*Data for In-County mail users

Table A3: Distribution of Second Class Mail Volume By: Type of Organization and Annual Copies Mailed

			Nonprofit Publications										
	Total	Gen. Publ.	Rel.	Educ.	Scient.	Phil.	Agri.	Lab.	Vet.	Frat.	Class.	Sci. of Agri.	Spec. Publ.	Can't tell
Number of Mailers Represented	35563	26563	3383	2290	1083	62	134	1160	46	377	5	21	46	392
Projected Annual Volume (in millions)	10807	7360	1051	771	287	21	44	671	10	97	1	25	35	436
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
1-10,000	0.3	0.2	0.3	0.6	0.6	0.1	0.7	0.1	0.0	0.4	0.0	0.2	0.2	0.1
10,001-100,000	4.5	3.7	7.7	6.9	12.3	11.0	9.4	1.7	8.6	12.3	100.0	1.8	4.2	2.4
100,001-1,000,000	23.9	24.9	20.9	26.9	19.9	34.5	45.2	17.3	91.4	50.4	0.0	0.0	95.6	9.3
1,000,001-10,000,000	51.9	57.3	47.3	25.4	37.4	54.3	44.7	46.8	0.0	36.9	0.0	98.1	0.0	30.6
>10,000,000	19.4	13.9	23.8	40.3	29.9	0.0	0.0	34.0	0.0	0.0	0.0	0.0	0.0	57.6
Sample Size	2709	1016	687	458	208	14	31	125	12	75	1	4	8	70

Table B3: Distribution of Second Class Mail Volume By: Profit/Nonprofit Category; In-County Use Status; and Annual Copies Mailed

		All Publications		Nonprofit		General	
	Total	In County	Not in County	In County	Not in County	In County	Not in County
Number of Mailers Represented	35563	15455	20108	4853	4147	10602	15961
Projected Annual Volume (in millions)	10807	5339	5468	1798	1690	3541	3778
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
1-10,000	0.3	0.3	0.2	0.4	0.3	0.3	0.2
10,001-100,000	4.5	7.0	3.1	10.4	3.9	5.5	2.8
100,001-1,000,000	23.9	25.5	23.0	25.9	19.2	25.3	24.6
1,000,001-10,000,000	51.9	47.3	54.6	34.6	42.7	53.3	59.5
>10,000,000	19.4	19.8	19.1	28.6	33.9	15.6	12.9
Sample Size	2716	1358	1358	924	776	434	582

Table C3: Distribution of Second Class Mail Volume By: Non-Profit Status; In-County Eligibility Category; and Annual Copies Mailed*

		All Publications		Nonprofit		General	
	Total	Eligible	Ineligible	Eligible	Ineligible	Eligible	Ineligible
Number of Mailers Represented	15455	13434	2020	4158	695	9276	1325
Projected Annual Volume (in millions)	5339	3265	2073	1193	604	2072	1468
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
1-10,000	0.3	0.5	0.0	0.6	0.1	0.4	0.1
10,001-100,000	7.0	10.3	2.1	14.3	3.2	8.2	1.6
100,001-1,000,000	25.5	31.6	16.2	27.0	24.0	34.0	13.0
1,000,001-10,000,000	47.3	35.7	65.2	22.3	57.0	42.6	68.5
>10,000,000	19.8	21.9	16.6	35.8	15.7	14.7	16.9
Sample Size	1358	1170	188	790	134	380	54

*Data for In-County mail users

Table A4: Distribution of Second Class Mail Volume By: Type of Organization and Advertising Percentage

			Nonprofit Publications											
	Total	Gen. Publ.	Rel.	Educ.	Scient.	Phil.	Agri.	Lab.	Vet.	Frat.	Class.	Sci. of Agri.	Spec. Publ.	Can't tell
Number of Mailers Represented	35563	26563	3383	2290	1083	62	134	1160	46	377	5	21	46	392
Projected Annual Volume (in millions)	10807	7360	1051	771	287	21	44	671	10	97	1	25	35	436
Advertising Percent														
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
0-9%	48.6	44.2	44.1	60.0	92.3	77.4	35.3	90.4	18.2	53.8	100.0	1.6	61.5	37.2
10-24%	10.9	7.1	26.2	3.9	2.2	2.0	3.3	3.0	61.2	40.2	0.0	0.0	0.0	62.2
25-49%	17.8	18.9	16.8	29.8	5.0	20.7	60.3	4.2	20.6	1.6	0.0	98.1	38.5	0.5
50-74%	20.8	28.9	3.4	5.3	0.1	0.0	1.1	0.0	0.0	0.1	0.0	0.0	0.0	0.2
75-100%	1.9	0.9	9.4	1.1	0.4	0.0	0.0	2.4	0.0	4.3	0.0	0.4	0.0	0.0
Sample Size	2709	1016	687	458	208	14	31	125	12	75	1	4	8	70

ble B4: Distribution of Second Class Mail Volume By: Profit/Nonprofit Category; In-County Use Status; and Advertising Percentage

		All Publications		Nonprofit		General	
	Total	In County	Not in County	In County	Not in County	In County	Not in County
Number of Mailers Represented	35563	15455	20108	4853	4147	10602	15961
Projected Annual Volume (in millions)	10807	5339	5468	1798	1690	3541	3778
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
0-9%	48.6	24.5	62.5	42.8	68.7	15.9	60.0
10-24%	10.9	19.7	5.8	31.9	11.8	13.9	3.4
25-49%	17.8	23.9	14.2	12.3	17.0	29.4	13.0
50-74%	20.8	28.1	16.6	3.4	1.7	39.7	22.9
75-100%	1.9	3.8	0.8	9.6	0.8	1.1	0.7
Sample Size	2716	1358	1358	924	776	434	582

Tabl 4: Distribution of Second Class Mail Volume By: Non-Profit Status; In-County Eligibility Category; and Percent Advertising*

	Total	All Publications		Nonprofit		General	
		Eligible	Ineligible	Eligible	Ineligible	Eligible	Ineligible
Number of Mailers Represented	15455	13434	2020	4158	695	9276	1325
Projected Annual Volume (in millions)	5339	3265	2073	1193	604	2072	1468
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
0-9%	24.5	26.2	22.0	33.6	59.3	22.3	6.8
10-24%	19.7	23.3	14.1	31.5	32.6	19.0	6.6
25-49%	23.9	24.0	23.8	16.2	5.4	28.1	31.2
50-74%	28.1	20.4	39.9	4.4	1.7	28.7	55.3
75-100%	3.8	6.1	0.3	14.4	0.9	1.8	0.0
Sample Size	1358	1170	188	790	134	380	54

*Data for In-County mail users

Table A5: Distribution of Second Class Mail Volume By: Type of Organization and Distance Distribution

	Total	Gen. Publ.	Nonprofit Publications											
			Rel.	Educ.	Scient.	Phil.	Agri.	Lab.	Vet.	Frat.	Class.	Sci. of Agri.	Spec. Publ.	Can't tell
Number of Mailers Represented	35563	26563	3383	2290	1083	62	134	1160	46	377	5	21	46	392
Projected Annual Volume (in millions)	10807	7360	1051	771	287	21	44	671	10	97	1	25	35	436
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
In County	18.0	18.1	24.1	7.5	5.1	21.9	2.5	10.7	16.0	16.1	5.2	0.0	8.6	28.8
Zones 1 & 2	26.5	29.0	26.5	20.2	11.3	35.3	61.8	6.5	51.1	44.5	0.0	96.9	39.6	10.9
Zone 3	4.1	4.4	3.6	7.2	8.5	2.0	13.6	0.2	8.6	6.2	0.0	0.9	9.3	1.2
Zone 4	4.2	4.4	3.9	8.9	9.7	2.3	1.8	0.1	5.8	5.0	0.0	0.1	0.1	0.5
Zone 5	3.0	2.6	5.0	6.0	19.1	2.6	0.5	0.2	3.0	5.3	0.0	0.2	0.1	1.6
Zone 6	1.7	1.9	1.9	2.9	6.5	0.2	0.1	0.0	3.9	0.9	0.0	0.0	0.2	0.2
Zone 7	0.9	0.9	0.9	1.5	3.8	1.2	0.0	0.0	1.0	0.4	0.0	0.0	0.0	0.6
Zone 8	3.4	2.6	3.0	11.0	9.1	7.4	2.2	7.4	2.2	1.4	0.0	0.0	0.0	1.4
Zone Undetermined	35.6	35.1	29.9	13.2	17.0	26.9	17.5	64.0	8.2	15.6	94.0	1.9	41.9	51.5
Foreign	2.5	1.0	1.2	21.5	9.9	0.2	0.0	0.8	0.1	4.7	0.9	0.0	0.0	3.4
Sample Size	2709	1016	687	458	208	14	31	125	12	75	1	4	8	70

Tabl [illegible] Distribution of Second Class Mail Volume By: Profit/Nonprofit Category; In-County Use Status; and Distance Distribution

		All Publications		Nonprofit		General	
	Total	In County	Not in County	In County	Not in County	In County	Not in County
Number of Mailers Represented	35563	15455	20108	4853	4147	10602	15961
Projected Annual Volume (in millions)	10807	5339	5468	1798	1690	3541	3778
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
In County	18.0	35.5	0.0	35.7	0.0	35.5	0.0
Zones 1 & 2	26.5	15.4	37.9	13.6	29.0	16.3	42.3
Zone 3	4.1	2.5	5.8	1.6	5.7	3.0	5.8
Zone 4	4.2	2.2	6.3	1.3	6.3	2.5	6.3
Zone 5	3.0	2.4	3.7	3.1	4.7	2.0	3.3
Zone 6	1.7	1.2	2.3	1.2	1.8	1.2	2.5
Zone 7	0.9	0.6	1.2	0.6	1.1	0.6	1.2
Zone 8	3.4	2.4	4.5	2.1	8.3	2.6	2.6
Zone Undetermined	35.6	36.9	34.2	39.2	33.7	35.8	34.5
Foreign	2.5	0.8	4.2	1.6	9.4	0.5	1.5
Sample Size	2716	1358	1358	924	776	434	582

Table C5: Distribution of Second Class Mail Volume By: Non-Profit Status; In-County Eligibility Category; and Distance Distribution*

	Total	All Publications		Nonprofit		General	
		Eligible	Ineligible	Eligible	Ineligible	Eligible	Ineligible
Number of Mailers Represented	15455	13434	2020	4158	695	9276	1325
Projected Annual Volume (in millions)	5339	3265	2073	1193	604	2072	1468
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
In County Eligible	31.3	51.8	0.0	51.9	0.0	51.7	0.0
In County Ineligible	4.3	0.0	10.8	0.0	6.5	0.0	12.5
Zones 1 & 2	15.4	12.5	19.9	8.2	23.2	14.7	18.6
Zone 3	2.5	1.3	4.5	0.7	3.3	1.6	5.0
Zone 4	2.2	1.7	2.9	0.5	2.8	2.3	2.9
Zone 5	2.4	1.5	3.7	1.0	7.1	1.8	2.3
Zone 6	1.2	0.8	1.8	0.2	3.0	1.2	1.3
Zone 7	0.6	0.5	0.9	0.3	1.1	0.6	0.8
Zone 8	2.4	1.2	4.2	0.5	4.8	1.6	3.9
Zone Undetermined	36.9	28.0	50.5	35.4	46.1	24.1	52.3
Foreign	0.8	0.7	1.0	1.3	2.0	0.4	0.6
Sample Size	1358	1170	188	790	134	380	54

*Data for In-County mail users

Table A6: Distribution of Second Class Mail Volume By: Type of Organization and Pre-Sort Distribution

	Total	Gen. Publ.	Nonprofit Publications										
			Rel.	Educ.	Scient.	Phil.	Agri.	Lab.	Vet.	Frat.	Class.	Sci. of Agri.	Spec. Publ.	Can't tell
Num of Mailers esented	35563	26563	3383	2290	1083	62	134	1160	46	377	5	21	46	392
Prc ted Annual e (in millions)	10807	7360	1051	771	287	21	44	671	10	97	1	25	35	436
tal	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
sic-Outside County	39.1	39.5	26.4	39.5	54.5	42.2	30.1	56.1	24.6	44.1	94.0	9.1	12.1	54.1
e Digit-Outside County	27.2	27.9	24.0	28.5	30.5	35.7	40.0	30.2	33.2	35.0	0.0	90.8	79.2	9.6
rrier Route-Outside County	7.0	5.7	18.7	2.8	0.0	0.0	27.3	1.9	26.1	0.0	0.0	0.0	0.0	4.2
ndetermined-Outside	5.8	7.5	5.6	0.2	0.0	0.0	0.0	0.2	0.0	0.0	0.0	0.0	0.0	0.0
reign Delivery	2.5	1.0	1.2	21.5	9.9	0.2	0.0	0.8	0.1	4.7	0.9	0.0	0.0	3.4
ssroom	0.2	0.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.4
County-Basic & Five Digit	14.3	13.5	20.4	7.3	5.1	21.9	2.5	9.7	8.3	16.0	5.2	0.0	8.6	28.8
County-Carrier Route	3.8	4.7	3.8	0.2	0.0	0.0	0.0	1.0	7.7	0.1	0.0	0.0	0.0	0.0
Se e Size	2709	1016	687	458	208	14	31	125	12	75	1	4	8	70

Table Distribution of Second Class Mail Volume By: Profit/Nonprofit Category; In-County Use Status; and Pre-Sort Distribution

			All Publications		Nonprofit		General	
		Total	In County	Not in County	In County	Not in County	In County	Not in County
Nu	of Mailers asented	35563	15455	20108	4853	4147	10602	15961
Pr	ted Annual me (in millions)	10807	5339	5468	1798	1690	3541	3778
	otal	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	asic-Outside County	39.2	36.4	41.9	33.4	43.4	37.9	41.2
	ive Digit-Outside County	27.2	19.8	34.9	24.2	27.5	17.8	38.5
	arrier Route-Outside County	7.0	5.7	8.4	3.3	16.5	6.9	4.4
	etermined-Outside	5.8	1.3	10.5	1.8	3.1	1.1	14.2
	oreign Delivery	2.5	0.8	4.2	1.6	9.4	0.5	1.5
	lassroom	0.2	0.3	0.1	0.0	0.0	0.5	0.1
	n County-Basic & Five Digit	14.3	28.1	0.0	32.0	0.0	26.3	0.0
	n County-Carrier Route	3.8	7.4	0.0	3.8	0.0	9.1	0.0

Table C6: Distribution of Second Class Mail Volume In County By: Non-Profit Status; New Eligibility Category; and Pre-Sort Distribution*

	Total	All Publications		Nonprofit		General	
		Eligible	Ineligible	Eligible	Ineligible	Eligible	Ineligible
Number of lers Represe	15455	13434	2020	4158	695	9276	1325
Projected ual Volume (illions)	5339	3265	2073	1193	604	2072	1468
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Basic side County	36.4	31.7	43.6	30.4	38.9	32.4	45.5
Five it-Outside County	19.8	10.3	34.3	14.3	42.1	8.3	31.2
Carri Route-Outside County	5.7	4.0	8.2	2.0	5.6	5.1	9.3
Undet ned-Outside	1.3	0.8	2.1	0.2	4.8	1.1	1.0
Forei Delivery	0.8	0.7	1.0	1.3	2.0	0.4	0.6
Class a	0.3	0.6	0.0	0.0	0.0	0.9	0.0
In Co y-Basic & Five Digit	24.4	40.4	0.0	46.6	0.0	37.2	0.0
In ible under new rules	3.7	0.0	9.4	0.0	5.5	0.0	11.0
In C y-Carrier Route	6.9	11.4	0.0	5.3	0.0	14.5	0.0
In ible under new rules	0.5	0.0	1.3	0.0	1.0	0.0	1.5
Samp ize	1358	1170	188	790	134	380	54

*Data for I unty mail users

Table A7: Distribution of Second Class Mail Volume By: Type of Organization and Copies Per Mailing

	Total	Gen. Publ.	Nonprofit Publications											
			Rel.	Educ.	Scient.	Phil.	Agri.	Lab.	Vet.	Frat.	Class.	Sci. of Agri.	Spec. Publ.	Can't tell
ber of Mailers Represented	35563	26563	3383	2290	1083	62	134	1160	46	377	5	21	46	392
ojected Annual Volume (in millions)	10807	7360	1051	771	287	21	44	671	10	97	1	25	35	436
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
1-1000	1.1	1.0	2.8	0.4	0.2	0.1	0.7	0.1	0.0	0.3	0.0	0.2	0.0	0.1
1001-10,000	12.9	14.7	13.4	6.5	13.0	7.1	13.9	3.3	8.6	18.3	100.0	1.6	4.4	3.2
10,001-100,000	47.1	52.1	46.7	34.2	28.4	38.4	40.7	23.5	91.4	75.7	0.0	0.0	95.6	13.7
100,001-1,000,000	33.6	30.1	37.1	18.5	58.5	54.3	44.2	49.8	0.0	5.7	0.0	98.1	0.0	83.0
>1,000,000	5.3	2.1	0.0	40.3	0.0	0.0	0.0	23.3	0.0	0.0	0.0	0.0	0.0	0.0
ple Size	2715	1016	686	458	208	14	31	125	12	75	1	4	8	77

Table B7: Distribution of Second Class Mail Volume By: Mailer's Profit/ Nonprofit Category; In-County Use Status; and Copies Per Mailing

	Total	All Publications		Nonprofit		General	
		In County	Not in County	In County	Not in County	In County	Not in County
of Mailers sented	35563	15455	20108	4853	4147	10602	15961
ed Annual e (in millions)	10807	5339	5468	1798	1690	3541	3778
al	100.0	100.0	100.0	100.0	100.0	100.0	100.0
000	1.1	2.3	0.4	2.8	0.1	2.1	0.5
01-10,000	12.9	25.0	6.1	17.4	3.8	28.4	7.0
,001-100,000	47.1	49.7	45.6	36.7	34.4	55.4	50.3
0,001-1,000,000	33.6	18.9	41.9	43.0	41.3	8.3	42.2
,000,000	5.3	4.1	6.0	0.0	20.3	5.8	0.0
Size	2715	1357	1358	923	776	434	582

Table C7: Distribution of Second Class Mail Volume By: Non-Profit Status; In-County Eligibility Category; and Number of Copies Per Mailing*

	Total	All Publications		Nonprofit		General	
		Eligible	Ineligible	Eligible	Ineligible	Eligible	Ineligible
Num of Mailers R sented	15455	13434	2020	4158	695	9276	1325
Pre ed Annual V e (in millions)	5339	3265	2073	1193	604	2072	1468
al	100.0	100.0	100.0	100.0	100.0	100.0	100.0
000	2.3	3.2	0.8	4.2	0.2	2.7	1.1
01-10,000	25.0	31.1	15.3	25.5	1.9	33.8	20.3
,001-100,000	49.7	45.6	56.1	35.2	39.5	50.7	62.4
,001-1,000,000	18.9	13.4	27.8	35.0	58.3	3.0	16.3
,000,000	4.1	6.6	0.0	0.0	0.0	9.8	0.0
mple Size	1357	1196	161	813	110	383	51

*Data y for current users of In-County mailing services.

Table A8: Distribution of Second Class Mail Volume By: Urban/Rural Category

	Total	Gen. Publ.	Nonprofit Publications											
			Rel.	Educ.	Scient.	Phil.	Agri.	Lab.	Vet.	Frat.	Class.	Sci. of Agri.	Spec. Publ.	Can't tell
Number of ers Represent	35563	26563	3383	2290	1083	62	134	1160	46	377	5	21	46	392
Projected al Volume (illions)	10807	7360	1051	771	287	21	44	671	10	97	1	25	35	436
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Large Metr itan Area														
Central ty	80.6	80.0	62.8	96.3	96.7	96.5	80.5	94.2	41.8	68.8	0.0	1.6	77.9	93.5
Suburb	4.1	5.4	2.2	0.4	2.2	0.0	0.0	0.0	0.0	0.2	100.0	0.0	0.0	0.0
Major llite Centers	1.7	1.9	2.7	0.4	0.1	1.4	4.9	0.4	0.0	0.0	0.0	0.0	16.8	0.9
Other Metr itan Area	12.6	12.2	26.3	2.6	0.7	2.1	8.5	5.3	58.2	31.0	0.0	98.4	5.3	5.5
Non Metrop an Area	1.0	0.4	6.1	0.3	0.2	0.0	6.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Sample Siz	2715	1016	686	458	208	14	31	125	12	75	1	4	8	77

Table B8: Distribution of Second Class Mail Volume By: Mailer's Profit/Nonprofit Category; In-County Use Status; and Urban/Rural Category

	Total	All Publications		Nonprofit		General	
		In County	Not in County	In County	Not in County	In County	Not in County
Number of M rs Represent	35563	15455	20108	4853	4147	10602	15961
Projected A l Volume (i illions)	10807	5339	5468	1798	1690	3541	3778
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Large Metro tan Area							
Central ty	80.6	68.6	87.5	82.5	81.8	62.4	89.9
Suburbs	4.1	3.8	4.3	2.2	0.4	4.5	5.9
Major S llite Centers	1.7	2.3	1.4	0.4	1.9	3.1	1.2
Other Metro tan Area	12.6	24.9	5.6	14.7	12.5	29.3	2.7
Non Metropo an Area	1.0	0.5	1.2	0.2	3.5	0.7	0.3
Sample Size	2715	1357	1358	923	776	434	582

Table C8: Distribution of Second Class Mail Volume By: Non-Profit Status; In-County Eligibility Category; and Urban/Rural Category*

		All Publications		Nonprofit		General	
	Total	Eligible	Ineligible	Eligible	Ineligible	Eligible	Ineligible
Number of Mailers Represented	15455	13434	2020	4158	695	9276	1325
Projected Annual Volume (in millions)	5339	3265	2073	1193	604	2072	1468
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Large Metropolitan Area							
Central City	68.6	74.3	59.3	79.0	89.0	72.0	48.2
Suburban	3.8	4.4	2.8	3.0	0.6	5.0	3.6
Major Satellite Centers	2.3	2.0	2.6	0.6	0.1	2.7	3.6
Other Metropolitan Area	24.9	18.4	35.2	17.0	10.3	19.1	44.6
Non Metropolitan Area	0.5	0.9	0.1	0.3	0.1	1.2	0.0
Sample Size	1357	1196	161	813	110	383	51

*Data only for current users of In-County mailing services.

Table C9: Distribution of In-County Mail Volume By: Number of In-County Pieces per Mailing and Mailer Eligibility Under New In-County Rules
(Volume estimates are expressed in Millions of pieces)

In-County Pieces per Mailing	Total			In-County Eligibility Under New USPS Rules					
				Eligible Users			Ineligible Users		
	No. Publ.	Ann. Vol.	Vol. > 20,000/ Mailing	No. Publ.	Ann. Vol.	Vol. > 20,000/ Mailing	No. Publ.	Ann. Vol.	Vol. > 20,000/ Mailing
Total	15455	1895	353	13435	1670	352	2020	225	1
0-20,000	14993	1291	0	13008	1068	0	1983	223	0
20,001-30,000	143	125	24	130	124.5	24	13	.5	--
30,001-50,000	188	136	75	164	134.5	74	24	1.5	1
50,000+	131	343	254	131	343	254	0	0	--

Library Rate Study

Advertising permitted by postal regulation in library rate mail is restricted to incidental announcements of books or sound recordings. It was felt that the only practical way of quantifying the use of incidental announcements was to actually examine a random sample of library rate mail. This would involve opening live mail for inspection which, according to the Postal Service, would violate postal regulations.[1] Thus the Commission has not been able to quantify the amount of advertising in library rate mail.

It was decided to collect data on senders and recipients in order to quantify types of organizations making use of library rate and to investigate its possible use for mailing sample copies by publishers to college faculty. Sender/recipient data were obtained from a random sample of approximately 2,400 library rate pieces. The sample was collected as an adjunct to normal data collection for the Postal Service's Revenue, Piece & Weight (RPW) data collection system. RPW routinely collects data from a sample of delivery units (carriers and box sections) located in a stratified sample of 611 post offices. For this study, each time RPW data were routinely collected the data taker separately recorded sender/recipient and weight information on each piece of library rate mail in the delivery unit.

The data were then coded by the Postal Service. Commission personnel reviewed the coding. The data were keypunched by the Service and data processing was done by the Commission.

The recording of the data by postal data recorders was not supervised by the Commission. Some nonsampling error may have been introduced at this stage of the study, since the data recording represents the work of hundreds of individuals. However, these technicians' principal function is to record data and, on the whole, we believe their work to be accurate.

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[1] The Service cited Sections 115.2 and 115.5 of the Domestic Mail Manual (DMM).

The data were collected over the entire eighth accounting period -- April 12 through May 9, 1986. Because of the length of this period, the apparent absence of significant seasonality factors affecting the category, and the large number of delivery units in the sample, it is believed that the resulting data are representative of library rate as a whole. Unfortunately, the Postal Service could not provide the Commission with the weighting factors needed to statistically weight the data in time for this report. Consequently, the data presented here are unweighted. When the weighting factors are received, the Commission will generate supplemental library rate tables. In the meantime, the unweighted data must be viewed with caution since the results are subject to change.

The three tables summarizing the library rate study results have the same format and labels. Included under "educational organizations" are schools or school districts, colleges and universities. Also included are other organizations commonly known to be educational or which have the word "education" or similar words in their names. Included under "libraries" are public libraries, the Library of Congress, and inter-library loans. Libraries which are part of other organizations are included under "other organizations." It should be noted that other libraries account for only five percent of the amount shown under "other organizations."

Table 1 presents the number of pieces being sent and received by sender/recipient category. It can be seen that publishers and distributors account for 44.5 percent of the total library rate mail sent. Educational institutions account for about 23 percent and libraries account for about 8 percent of the mail sent. The remainder is sent by religious and other organizations and by individuals.

With respect to mail received, educational organizations account for about 45 percent and libraries, 14 percent. It can be seen that publishers/distributors receive nearly 15 percent of the total. Much of this mail may be contrary to postal regulations for library rate. Section 725.4(d) of the Domestic

Mail Manual states "Books may not be returned to a publisher or distributor by a school, college or a public library." In this connection it should be noted that no special permit or authorization is required to use library rate. Indeed, since individuals are eligible to send library rate, it would not be practical to require authorization under current eligibility rules.

It is apparent that the portion of the mail being sent between libraries and individuals is small (less than one percent of the total). Individuals, in general, send less than two percent and receive seven percent of library rate mail.

Table 2 presents data in the same format as Table 1 but shows the weight of the volume being sent and received rather than the number of pieces. It can be seen that while publishers/distributors send 44.5 percent of the pieces, they send 59.8 percent of the total weight. This difference is to be expected since publishers/distributors are much more likely to send multiple pieces in the same package than are the other categories of senders. Thus, all the other categories send a smaller percentage of the total weight of library rate than they send of the total pieces. The same practice explains the fact that educational organizations and libraries receive a greater percentage of the weight of library rate than they receive of the pieces.

Table 3 breaks down the $22.2 million library subsidy by the sender/recipient categories. Publishers/distributors receive 54.8 percent of the subsidy, educational organizations receive 14.4 percent, and libraries, 5.1 percent. The Commission has no data on the extent to which the subsidy to publishers/distributors is actually passed on to the recipients.

Mail received by educational organizations and libraries combined account for over 65 percent of the library rate subsidy. Matter sent and received by individuals accounts for about six percent of the total subsidy.

The final subject addressed is publishers' sample copies -- a form of advertising promotion. While direct data could not be obtained, we have identified the pieces sent by publishers/distributors to colleges and universities to the attention of an individual. These amount to 6.3 percent of the total pieces and 3.2 percent of the total weight of library rate. Obviously there are many reasons why a publisher might send a shipment to the attention of an individual at a college or university. However, these pieces are substantially lighter than the average piece sent by a publisher/distributor to a college or university indicating that, to a disproportionate degree, they contain a single book -- either ordered or a sample copy. They account for 4.3 percent of the total subsidy or $1 million.

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TABLE 1 PERCENT OF LIBRARY RATE PIECES BY SENDER AND RECIPIENT

TABLE 2 PERCENT OF LIBRARY RATE POUNDS BY SENDER AND RECIPIENT

TABLE 3 PERCENT OF LIBRARY RATE SUBSIDY BY SENDER AND RECIPIENT

TABLE 1

PERCENT OF LIBRARY RATE PIECES BY SENDER AND RECIPIENT

SENDER CATEGORY	RECIPIENT CATEGORY							
	Publisher/ Distributor	Educational Organizations	Libraries	Religious Organizations	Other Organizations	Individuals	Unknown	Total
Publisher/ Distributor	1.2	30.9	6.2	0.9	2.7	1.6	0.9	44.5
Educational Organizations	9.0	6.5	1.7	0.1	3.4	0.9	1.0	22.6
Libraries	0.8	1.5	3.9	--	0.7	1.0	0.2	8.1
Religious Organizations	0.2	0.3	--	0.7	1.0	1.9	0.5	4.5
Other Organizations	1.2	4.4	0.9	0.3	5.7	1.5	0.3	14.2
Individuals	0.1	0.6	0.3	0.3	0.5	*	--	1.9
Unknown	2.2	0.3	0.6	0.1	0.5	0.1	0.3	4.1
	14.7	44.5	13.7	2.4	14.4	7.0	3.2	100.0

* Less than 0.1 percent

DOES NOT ADD DUE TO ROUNDING

TABLE 2

PERCENT OF LIBRARY RATE POUNDS BY SENDER AND RECIPIENT

SENDER CATEGORY	RECIPIENT CATEGORY							
	Publisher/ Distributor	Educational Organizations	Libraries	Religious Organizations	Other Organizations	Individuals	Unknown	Total
Publisher/ Distributor	1.7	39.1	13.0	1.1	2.7	1.6	0.7	59.8
Educational Organizations	5.7	5.7	1.1	0.1	3.9	0.3	0.8	17.6
Libraries	0.4	0.7	2.2	--	0.2	0.3	0.1	3.9
Religious Organizations	0.1	0.2	--	0.4	0.5	0.6	0.2	2.0
Other Organizations	0.8	5.7	0.8	0.3	4.7	0.4	0.1	12.2
Individuals	0.1	0.7	0.4	*	0.6	*	--	1.8
Unknown	1.1	0.1	0.5	*	0.2	*	0.2	2.1
	9.8	52.2	17.9	1.8	12.9	3.3	2.0	100.0

* Less than 0.1 percent

DOES NOT ADD DUE TO ROUNDING

TABLE 3

PERCENT OF LIBRARY RATE SUBSIDY BY SENDER AND RECIPIENT

SENDER CATEGORY	RECIPIENT CATEGORY							
	Publisher/ Distributor	Educational Organizations	Libraries	Religious Organizations	Other Organizations	Individuals	Unknown	Total
Publisher/ Distributor	1.6	36.6	10.5	1.1	2.7	1.6	0.8	54.8
Educational Organizations	7.1	5.9	1.2	0.1	3.7	0.5	0.9	19.4
Libraries	0.5	0.9	2.7	--	0.4	0.5	0.1	5.1
Religious Organizations	0.2	0.2	--	0.5	0.7	1.0	0.3	2.8
Other Organizations	1.0	5.2	0.8	0.3	5.1	0.8	0.1	13.3
Individuals	0.1	0.7	0.4	0.1	0.6	*	--	1.8
Unknown	1.5	0.2	0.5	0.1	0.3	0.1	0.3	2.8
	11.8	49.6	16.2	2.1	13.4	4.5	2.4	100.0

* Less than 0.1 percent

DOES NOT ADD DUE TO ROUNDING

APPENDIX G
Part One

ELIGIBILITY ADMINISTRATION: METHODS AND PROBLEMS

The Postal Rate Commission Report emphasizes several times the importance of administrable rules for determining preferred-rate eligibility. Designing such rules requires some appreciation of how this mail is entered into the Postal system. We concentrate on the bulk classes -- second and third -- as they have specialized arrangements for entry. There are no specialized arrangements for library rate mail.

For both second and third class nonprofit usage, a permit is required. Second-class permits for original entry are issued by Postal Service headquarters. Domestic Mail Manual [DMM] § 441.112. Separate authorization to use the preferred rate is required, in addition to the second-class permit. DMM §§ 423.11, 443.1. The Director, Office of Mail Classification, Postal Service Headquarters, also issues these authorizations. DMM § 443.31.

Third-class nonprofit entry is governed by bulk mailing permits and special bulk rate authorizations issued at each post office where the mailer enters mail. DMM §§ 623.1, 641, 642.1. Under procedures in effect during the study period, the decision on nonprofit eligibility was made at one of the 37 Mail Classification Centers (with appeal of a denial to Postal Service Headquarters). DMM § 642.2-.3. The Service is currently revising its procedures to centralize somewhat the functions of the Mail Classification Centers. Of particular importance is its plan for communications links among the five new classification centers allowing a greater degree of mutual information support (and decisional consistency) than is now being achieved.

As a result of the difference in basic procedures, most eligibility records are located at Headquarters for second-class mailers and in the field for third-class mailers.

Apart from the inherent problems of applying any generalized eligibility criterion to a variety of organizations, the Service faces practical challenges in policing eligibility for preferred rates. One is created by the sheer number of eligible organizations -- especially in third class. Over 300,000 authorizations have been issued. The Service reserves the right to revoke an authorization if the holder ceases to be eligible, or if it fails to use its authorization for a substantial time. DMM § 643.1-.3. It has had difficulty in keeping up with the workload imposed by such reviews and possible revocations. The General Accounting Office, in Subsidized Postage, GAO/GGD-85-42 (May 22, 1985), App. I, p. 5, reported:

> Postal Service headquarters, subsequent to a report by the Service's Inspection Service, initiated two projects: identification of inactive authorizations and reverifications of organizations' eligibility to mail at the nonprofit rate. As of January 1985, more than 29,000 inactive permits had been revoked for non-usage and, of the 180 authorizations selected for reverification, 93 of 146 reviewed to date were revoked because they no longer qualify for nonprofit mailing privileges.

Another problem -- also mentioned in the cited GAO report -- is the use of nonprofit mailing authorizations to benefit ineligible parties. As GAO summarized the practice (Ibid.):

> The Service's Domestic Mail Manual states that an organization authorized to mail at the preferred rates may mail only its own matter at those rates. Any matter produced for or mailed on behalf of an organization not itself authorized to mail at the preferred rates is prohibited. This prohibition does not, however, preclude the mailing of matter which can produce benefits for both nonprofit and profit-making organizations.
>
> Both we and the Inspection Service found that nonprofit organizations have entered into agreements with for-profit organizations which result in large quantities of commercial-type promotional material being mailed at the preferred rate. We found that such arrangements have been used to sell seminars, insurance, and commemorative clocks and watches. . . .

The Postal Rate Commission Report recommends limiting the uses that can be made of the nonprofit rate, even by the authorized mailer acting alone. As Postmaster General Casey urges in his April 18, 1986, letter (attached as Part Two of this Appendix), the Commission sought workable administrative rules for this type of limitation -- not merely generalized principles. In this connection, however, a few observations are in order regarding the way existing mechanisms -- for third-class mail in particular -- might be adapted to this task.

Since the proposal is to restrict uses, any document embodying the authorization to use preferred rates should reflect the use restrictions. These would be as much a factor in eligibility as the organization's belonging to one of the favored categories (religious, educational, scientific, etc.). Since most users can no doubt be relied on to observe the rules, expressing them in the authorizing document should ease the administrative burden.

Related to this suggestion is the fact that, given usage restrictions, mailers would have to be prepared to provide sample mailpieces to the acceptance and verification employees. Otherwise, the content of the piece and hence the permissibility of the use being made of the authorization, for that mailing, would be unknown. This suggests that the burden is on the mailer to establish, in each case, that the mailing is for a legitimate use -- for instance, if it contains advertising, the text of the mailpiece must clearly indicate why it is permissible advertising. There is nothing new in principle about laying down such a requirement. Under present DMM § 642.121, an applicant must provide evidence that it qualifies, as an eligible nonprofit body, for the privilege of preferred rates. The suggestion above merely extends this principle, in a simple and logical way, to the further eligibility question raised by use restrictions.

APPENDIX G
Part Two

THE POSTMASTER GENERAL
Washington, DC 20260-0010

April 18, 1986

Dear Mr. Clapp:

This responds to your letter of March 25, 1986, requesting our views on the administrative practicability of restricting the commercial or promotional use of nonprofit mailing privileges.

The primary concern of the Postal Service is that any new legislation restricting the use of nonprofit mailing privileges should clearly state Congressional intent, with no exceptions or loopholes. Any restrictions on the content of nonprofit mailings must be unmistakable, so that an acceptance clerk can determine the correct postage by simply looking at a sample mailing piece. Clearly stated restrictions will also benefit mailers, who will understand what type of content will cause a mailing to be charged a higher rate, and will find it easier to comply with a clear rule than a fuzzy one. We emphasize that any restrictions on the content of nonprofit mailings must be objective and not depend upon the purpose or intent of either the mailer or the mailing piece. Experience indicates that classification standards which hinge upon the motives of a publisher or other mailer are next to impossible to enforce.

We believe that section 15103(b)(1) of the 1985 Budget Reconciliation Act offers a promising standard for identifying mail which is not eligible to be mailed at the third-class nonprofit rates. An acceptance clerk could readily identify a mailing which "advertises or promotes the sale of, recommends the purchase of, or announces the availability of any article, product, service, insurance, or travel arrangements." We expect that this wording would be supplemented by a full legislative history to discourage attempts to disguise advertising as something else.

We warn, however, that writing exceptions into the suggested language would compromise its effectiveness. Attempts to stop the abuse of even a narrow exception could require extended administrative and court proceedings, and even the successful termination of an abuse would not necessarily enable us to recover the subsidy paid on an organization's mailings.

We do not agree with the Third Class Mail Association that the tax code's concept of unrelated business income should be grafted onto postal regulations. Acceptance clerks do not have the time or resources to inquire into the "primary purpose" of a nonprofit organization at the loading dock. To guard against improper mailings, clerks check whether a sample envelope appears on its face to contain the nonprofit organization's own mail and not that of some other company or organization. This inspection is an objective test which can be performed quickly in busy surroundings.

It is an understatement that acceptance clerks would "need some training" to determine whether a particular mailing was substantially related or unrelated to an organization's primary purpose. The body of tax law concerning unrelated business income is anything but clear and consistent, and mail acceptance personnel must often deal with sophisticated customers (and their lawyers) who know how to use the rules. Piling complex tax law principles on top of the third-class mailing regulations would merely create administrative confusion. These problems would be compounded if the unrelated business income concept were applied to advertising in nonprofit second-class publications. In such a case, acceptance clerks might be required to examine each separate advertisement in an issue of a publication to determine whether it was substantially related to an organization's primary purpose.

Thank you for this opportunity to comment. We look forward to working with you on other aspects of your continuing study.

Sincerely,

Albert Casey

Albert V. Casey

Mr. Charles L. Clapp
Secretary
Postal Rate Commission
Washington, D.C. 20268-0001

APPENDIX H

ARE PREFERRED RATES ECONOMICALLY INEFFICIENT?

This Appendix considers two aspects of economic efficiency in connection with the preferred rates and associated revenue forgone subsidy:

1. From the standpoint of economic theory, does the preferred rate mechanism imply economic inefficiency?

2. Even if it does not, does the fact that preferred rates are lower than regular rates for similar mail entail any economic distortions?

Solving the first question requires accurate understanding of the concept of subsidy; it is sufficient to say that a public subsidy (such as the revenue forgone appropriation) does not imply the presence of a cross-subsidy. It is only cross-subsidy which interferes with marginal conditions of optimality. This question is discussed at p. 21 of the Report, where the usage of subsidy terminology reflected in some presentations on the record (Tr. 1/83, 84, 87, for example) is corrected.

Apart from this terminological problem, we have received comments filed by the staff of the Federal Trade Commission (Bureau of Economics, Bureau of Consumer Protection, and Bureau of Competition; Comments filed April 20, 1986) suggesting that the preferred categories are priced below cost, and undertaking to calculate the social loss implied by this price structure. We appreciate the Bureaus' comments, and particularly their effort to apply rigorous economic theory to the general question of preferred-rate subsidies. That we do not concur in their conclusions is due not to disagreement with their underlying economic theory but to certain failures in its application to the special context of postal costs and ratemaking.

The central theoretical concern[1] of the Bureaus is that, since in their view there are no economies of scale in the Postal Service, breakeven implies pricing at marginal cost. If we assume arguendo[2] that the Bureaus are correct about scale economies, however, their conclusion -- that preferred third-class rates are less than marginal cost -- does not follow and is in fact demonstrably wrong.

The Bureaus argue that since, in their view, regular third-class bulk rates must equal marginal cost, nonprofit third-class rates, being lower, must fail to recover marginal cost. A similar argument is applied to second class. The Bureaus then calculate the deadweight loss from these inefficient prices.

Third-class regular rates, however, are not equal to marginal cost, but are substantially above it. The cost coverage for this category was approximatley 146 in Docket No. R84-1. Taking attributable cost as equivalent practically to marginal cost, this means that the price is nearly half again as great as the marginal cost of this mail. This is both possible and necessary because the Postal Sevice is a multiproduct enterprise. Joint and common costs are necessarily present in it; hence not all costs can be positively identified with

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[1] The Bureaus do identify some costs which they believe are more variable than past evidence developed before us in rate proceedings has indicated. FTC Comments at 4, n. 8. These are fact questions, which of course can be examined in future rate proceedings. This Commission's willingness to pursue such questions in successive cases was cited with approval in National Association of Greeting Card Publishers v. U.S. Postal Service, 462 U.S. 810, 826 (1983).

[2] This too, of course, is a fact question. It was considered in several rate cases -- Dockets R71-1, R74-1, and most recently, at PRC Op. R80-1, App. B, para. 028-029. The evidence has been conflicting: the studies the Bureaus cite indicate no economies of scale, but testimony by Prof. Ordover (Docket No. R84-1, USPS-T-9, Appendix: Public Interest Pricing and Frequency of Delivery) may point in the opposite direction.

(attributed to) the several products individually.[3] As estimated in Docket No. R84-1 (Appendix G, Sched. 1), third-class bulk regular mail would contribute 3.3 cents per piece to institutional cost. The Cost and Revenue Analysis Report for FY 1985 shows an actual 3.0 cent contribution.

It is evident, therefore, that since the regular rate is well above the only available proxy for marginal cost, it cannot be deduced from the lower rate for nonprofit third class that the nonprofit rate is below marginal cost. In fact, it is at marginal (attributable) cost: this is a statutory requirement [39 U.S.C.§§ 3622(b)(3), 3626(a)(1)] which the Commission follows. Hence it cannot be asserted that nonprofits are being induced to overconsume, and so misallocate society's resources, by a price below cost.[4]

This brings up another, subsidiary fallacy in the Bureaus' argument: the assumption that there is only one product -- third-class mail service -- which is being sold at two prices to two groups of users (regular and nonprofit). In fact, because of differing mail characteristics, regular and nonprofit third-class mail are different products, with different marginal costs. The cost of nonprofit mail has been shown to be substantially lower than that of regular-rate mail. Even if it were true that the regular rate was equal to marginal cost, therefore, it could not be assumed, as the Bureaus do, that the nonprofit rate was below marginal cost.

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[3] The theory of optimal pricing was originally conceived for single-product firms, where indeed marginal-cost pricing in the presence of constant returns to scale will lead to breakeven. The multiproduct firm adds serious complexities: economies of scope as well as economies of scale become a possibility and, as noted, joint and common costs arise. An interesting discussion is found in Northeastern Telephone Co. v. American Tel. & Tel. Co., 651 F.2d 76, 86-90 (2d Cir. 1981), certiorari denied, 455 U.S. 943 (1982).

[4] Preferred rates were in fact below marginal cost for many years as a result of "phasing" subsidies. These subsidies are no longer being provided.

Even if no cross-subsidy is involved in offering lower rates to preferred mailers, other forms of inefficiency can arise because of the difference in price for essentially the same service. The FTC Bureaus point out that a lower price creates incentives for overconsumption on the part of preferred mailers (or, equivalently, underconsumption on the part of other mailers). Overconsumption of mail services by preferred mailers can inflict significant costs on the Postal Service. For example, preferred mailers may leave to the Postal Service certain processing tasks that could be more efficiently performed by the mailer.

The major witness who addressed the lack of efficiency in mail preprocessing in the nonprofit sector was James Pehta of List Processing Company in Chicago. He argued that third-class nonprofit and second-class nonprofit mail users do not do all they can to lower their postage bills. Some national charities do not have the density to presort, but others do, and do not take advantage of the opportunity. While over 57 percent of the total third-class mail volume for commercial rate mailers is mailed at carrier-route presort rates, only 17.6 percent is carrier-route presorted for nonprofit rate mailers.

Pehta concludes that the Congress' subsidy might be reduced proportionately if nonprofit mailers made more use of presort. He showed several examples of how firms with actual piece counts and densities within ZIP Codes and carrier routes could save money on postage if they did more presorting. He claimed smaller nonprofit organizations could save 30-50 percent of their total postage costs through use of carrier-route and five digit presort programs.[4]

Mr. Pehta finally suggested that the subsidy be related to the nonprofit organization's use of presort. This appears difficult to administer since different organization's mailings differ in their densities within ZIP Codes. Nevertheless, the point that opportunities for greater worksharing and corresponding cost savings exist in third-class nonprofit mail seems meritorious.

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[4] Comments of James Pehta, representing List Processing Company, SS86-1, April 2, 1986, p. 4.

The conclusion is not crystal clear, however. The facts are that while carrier-route presort is used for over 50 percent of the commercial third-class rate category, it represents less than 20 percent of the nonprofit market. This lack of adoption can be explained in ways that do not involve inefficient overconsumption of mail services. Nonprofit got a late start: bulk rate regular became eligible for additional presort rate recognition in 1979, Quarter 2, whereas nonprofit eligibility came in 1980, Quarter 3. Whereas commercial carrier-route presort has reached a plateau, the nonprofit share is still growing. It must also be recognized that the reward for additional presort is less in nonprofit, and nonprofit mailers do not always have sufficient density to have the required minimums in carrier route. The reward for moving from required presort to carrier route is 3.0 cents in nonprofit and 4.2 cents in regular. If these discounts accurately reflect cost savings to the Postal Service, then less presorting by nonprofits is efficient. This is because physical presorting of mail costs the same to the presorter whether the mail is regular or nonprofit. Presorting by nonprofits is beneficial to the economy only if the presorting can be performed for less than 3 cents per piece. Unfortunately, we still do not know whether opportunities for greater worksharing are really present in third-class nonprofit mail.

[illegible]

[illegible] finally suggested that the number [illegible]

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[4] [illegible] April [illegible], p. [illegible]

LISTING OF PARTICIPANTS[*]

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[*] We received a number of comments which were considered in this investigation but which are too numerous to list here. All of the filed documents facilitated our task, and we appreciate the efforts of the commentors who took the time to express their views.

PREFERRED RATE MAIL STUDY

Written Testimony and/or Exhibits Submitted
1986

Party	Witness	Date	Place
AAA Travel Agency	William Craig	April 2	MN
ABP	James Mulholland, Jr.	March 12	D.C.
Advo-System, Inc.	Thomas McLaughlin (mailed)		
AFL/CIO & ILCA	Susan Dunlop	March 12	D.C.
	Gerald Archuleta	March 18	CO
	Gordon Spielman	April 2	MN
	Patsy Cashmore	April 2	IL
(The Building Tradesman)	Don Constantineau	April 2	IL
AFL/CIO & ILCA (WLPA & ILCA)	James Earp	March 24	CA
Alliance Theater Co./Atlanta Children's Theater	Edith Love	March 18	GA
Alliance of Nonprofit Mailers (ANM)	Dr. John Haldi (Suppl. Test. mailed)	March 12	D.C.
	Clyde E. Shorey, Jr.		
	Joel Thomas		
American Concrete Institute	Robert Abramson	April 2	IL
American Diabetes Association	Giles Kobilka	April 2	MN
American Heart Association, Greater Los Angeles Affiliate	Robin Parsky	March 24	CA
American Legion	Daniel S. Wheeler	March 12	D.C.
	Alton H. Carpenter	March 27	NY
	Chuck Ferguson	April 2	MN
American Library Association	Eileen D. Cooke (mailed)		
American Lung Assn.	Dallis Pierson, MPH	March 18	CO
	Alton Ray	March 18	GA
	Nancy Zink	April 2	MN
	D.C. filing mailed)		

Party	Witness	Date	Place
American Red Cross	James Hale	March 12	D.C.
American Society of Clinical Pathologists	Dr. Robert A. Dietrich (mailed)	April 2	IL
ANPA	Sandra Hardy (mailed)		
APPA (Assoc. of Physical Plant Administrators)	Walter A. Schaw	March 12	D.C.
Arrowhead Library System	Harry Whitmore	April 2	MN
Art Institute of Chicago (American Arts Alliance)	Christine O'Neill	April 2	IL
Arthritis Foundation	Darla Romp	March 18	CO
	Mamie P. Thomas	March 18	GA
	Bernhardt Hertz (Exhibits only)	March 24	CA
	Marty Cook	March 25	TX
	Ross Alfieri	March 27	NY
	Marilyn Haugen	April 2	MN
	Robert Miller	April 2	MN
	Ronald E. Carlson	April 2	IL
Arts & Science Panel (Science Museum of Minneapolis)	Priscilla Farnham	April 2	MN
(The Children's Theater Company)	Marcy Dowse	April 2	MN
(PBS - Twin Cities Public Television)	Glenn Fisher	April 2	MN
Association of Business Publishers	Robert Saltzstein (mailed)		
ASTA (American Society of Travel Agencies)	Howard S. Pollock CTC	March 12	D.C.
Baptist Press	Jim Newton	March 18	GA
The Baptist Standard	Presnell H. Wood	March 25	TX
Bennington College	Michael Hooker (by mail)		

Party	Witness	Date	Place
Bethesda Lutheran Home	Marlys Taege	April 2	IL
Billy Graham Evangelistic Assoc.	George Wilson	April 2	MN
Black Hills State College (See C.A.S.E.)			
Blinded Veterans Association	Ronald L. Miller PH.D.	March 12	D.C.
Bovard, James	James Bovard	March 12	D.C.
Bureau of Economics (FTC)	Richard Higgins (mailed)		
Business Coalition for Fair Competition	Bruce Beckham Joseph F. O'Neil	March 12	D.C.
BYU Alumni	Stephen L. Barrett	March 17	D.C.
California State PTA	Helen Cohen	March 24	CA
Cancer Care, Inc.	Lisa Hutchinson	March 27	NY
CARE	Frank Goffio	March 27	NY
The Carol Enters List Co.	Carol Enters Kerle	March 27	NY
Catholic Bulletin Publishing Company	Rev. Thomas E. Comber	April 2	MN
Catholic Communications (Georgia Bulletin)		March 18	GA
Catholic Guild for the Blind	William F. Lynch	April 2	IL
Catholic Press Association, et al. (Southern Baptist Press Association) (Catholic New York) (Associated Church Press)	Dr. John Stapert Bob Terry Mary Polanco Arthur McKenna J. Martin Bailey	March 12 March 12 March 18 March 27 March 27	D.C. D.C. CO NY NY
The Catholic Voice	Dan Morris	March 24	CA

Party	Witness	Date	Place
Chamber of Commerce	Dr. J.R. Kirkland	April 2	MN
Chicago Lung Association	John L. Kirkwood	April 2	IL
Children's Deafness Foundation	Diane E. Carabello	March 18	CO
Children's Defense Fund--Minnesota Project	Luanne Nybert	April 2	MN
Children's Hospital Foundation	Gary D. Schrenk	March 18	CO
Children's Television Workshop	Nina Link	March 27	NY
Chimera Theatre Company	Rhea Nyquist	April 2	MN
Christian Science Monitor	Katherine Fanning	March 27	NY
Cleworth Association	Charles Cleworth (Exhibits only)	March 18	CO
College of DuPage	D. Richard Petrizzo	April 2	IL
Communicating for Agriculture	Peter Risbrudt	April 2	MN
Congressional Budget Office (CBO)	Rudolph G. Penner	March 12	D.C.
Consumers Union of U.S., Inc.	Rhoda K. Karpatkin	March 27	NY
Council for the Advancement & Support of Education (C.A.S.E.)			
(University of Wisconsin)	Ronald C. Bornstein	March 12	D.C.
(Black Hills State College)	Charles M. Schad	March 18	CO
(Florida Jr. College at Jacksonville)	Dr. Stephen R. Wise	March 18	GA
(Georgia Institute of Technology)	Thomas K. Hamall	March 18	GA
(Pepperdine University)	Michael F. Adams	March 24	CA

Party	Witness	Date	Place
(C.A.S.E.- cont'd.) (Southern Methodist University)	Gary A. Ransdell Robert W. Oran/ Kathryn R. Costello	March 25	TX
(University of New Hampshire)	Emily K. Smith	March 27	NY
(State University of New York)	James Van Houten	March 27	NY
(University of Minnesota)	Stephen Roszell	April 2	MN
(University of Nebraska-Lincoln)	Viann Meyer Schroeder	April 2	IL
(University of Wisconsin-Madison)	Gayle M. Langer	April 2	IL
Creative Direct Response	Raymond Grace	March 25	TX
Crippled Children's Society of Los Angeles, Inc.	Robert Robinson	March 24	CA
The Dallas Opera	Plato Karayanis	March 25	TX
Dallas Symphony Association	Douglas W. Kinzey	March 25	TX
Denver Botanic Gardens (See NMF)			
Denver Center for the Performing Arts	Gully Stanford	March 18	CO
Denver Dumb Friends League	Molly Cannon Stevenson	March 18	CO
Denver Free University	Tracy L. Dunning	March 18	CO
Denver Museum of Natural History	Diana Lee Crew	March 18	CO
Denver Public Library Friends Foundation	Mary T. Fletcher	March 18	CO
Denver Zoological Foundation	Ronald J. Oyer	March 18	CO
Des Plaines Publishing Co. (Chicago Suburban Times)	Norman Hirsch	April 2	IL

Party	Witness	Date	Place
DFL State Party	Mary Zalk	April 2	MN
Direct Marketing Association	Richard A. Barton (mailed)		
Disabled American Veterans	Stephen L. Edmiston John Simmons	March 12 March 25	D.C. TX
Disabled American Veterans, Dept. of California	Stuart J. Cody	March 24	CA
The Disciple (Christian Board of Publication)	James L. Merrell	April 2	IL
Douglas County Publishing Company (News-Press & Squire Publications)	Jerry Brock	March 18	CO
Dunlap, William	William Dunlap	April 2	MN
Elderhostel	Michael Zoob	March 12	D.C.
Florida Jr. College at Jacksonville (See C.A.S.E.)			
Foreign Policy (Magazine)	Peggy Jarvis (mailed)		
Friends of the C. Henry Kempe Center for the Prevention & Treatment of Child Abuse	Kathleen Howard	March 18	CO
Georgia Institute of Technology (See C.A.S.E.)			
Georgopulos, Barry	Barry Georgopulos	March 18	CO
Girl Scout Council of Orange County	Mona Ware	March 24	CA

Party	Witness	Date	Place
Good Shepherd Lutheran Home of the West	Raymond J. Cauwet	March 24	CA
Gorman Publishing Company	Peggy Stath	April 2	IL
Greater Los Angeles Zoo Association	W. Stuart Ritter	March 24	CA
Greater Minneapolis Day Care Association	Dale Anderson	April 2	MN
Gulf Publishing	Robert De Sondre (Exhibits Only)	March 25	TX
HALT	Glenn Nishimura (mailed)		
Hamilton, Leland	Leland Hamilton	March 24	CA
Harper's Magazine	Randall Warner	March 27	NY
The Heartland Institute	Joseph Bast	April 2	IL
Holy Cross Association	Rev. Herbert C. Yost, C.S.C. (mailed)		
Hunterdon County Democrat	John Thomas	March 27	NY
ICIA (International Communications Industries Association, et al.)	Kenton Pattie Gene Kahn	March 12 April 2	D.C. IL
Illinois Library Association	Deborah Miller	April 2	IL
Indiana Children's Christian Home	Jeffrey L. Sparks	April 2	IL
KCET Public TV Station	Tim Conroy	March 24	CA

Party	Witness	Date	Place
Labor Press Council of Metropolitan New York	Matthew F. Doherty	March 27	NY
Lakewood Publications	James Secord	April 2	MN
Little City Foundation	Bernard Kaplan	April 2	IL
List Processing Co.	James E. Pehta	April 2	IL
Los Angeles Mission	Mark Holsinger	March 24	CA
Los Angeles Philharmonic Assoc.	Leni I. Boorstin (Exhibits only)	March 24	CA
Lowell Lundstrom Ministries	James F.Konsor	April 2	MN
Lutheran Social Services of Illinois	H. William Matter	April 2	IL
The Lutheran Standard	Dr. Lowell G. Almen	April 2	MN
Lyal Marshall Advertising	Lyal Marshall (Exhibits only) (mailed)	March 27	NY
Magazine Publishers Association (MPA)	Bill Gorog	March 12	D.C.
Management Applied Programming, Inc.	Shirley O. Mills-Hanson	March 24	CA
March of Dimes Birth Defects Foundation	Samuel F. Ruello John J. O'Connor (mailed) James Nelson	March 27 March 27 April 2	NY NY MN
Mason, Daniel	Daniel Mason	March 27	NY
The Metropolitan Opera	Michael Bronson (Exhibits only)	March 27	NY
Midwest Labor Press Association	Drew Mendelson	April 2	MN
Midwest Travel King, Inc.	Morton Mann	April 2	IL

Party	Witness	Date	Place
Miller Freeman Publications, Inc.	Marshall Freeman	March 24	CA
Minneapolis Society of Fine Arts	Charles W. Skrief	April 2	MN
Minnesota Department of Education (Minnesota Office of Library Development & Services)	Roger Sween	April 2	MN
Minnesota Farmers Union	Mark Steiner	April 2	MN
Minnesota Society for Prevention of Blindness & Preservation of Hearing	Nancy A. Massey Marla J. Kapperud	April 2 April 2	MN MN
Minnesota State Law Library	Sara Galligan	April 2	MN
Morris Animal Foundation	Claude Ramsey	March 18	CO
Sen. Daniel P. Moynihan	Deborah Famighette (Presented statement)	March 27	NY
Ms. Magazine & Ms. Foundation for Women	Patricia Carbine	March 27	NY
Music Center of Los Angeles County (Mark Taper Forum) (Performing Arts Council)	Lee Howard	March 24	CA
National Association of College & University Business Officers (University of Washington)	Raymond A. Rikansrud	March 24	CA
(NACUBO) (Macalester College) (Iowa State University)	Paul J. Aslanian Warren R. Madden	April 2 April 2	MN IL
National Association of College Stores, Inc.	Garis F. Distelhorst (mailed)		

Party	Witness	Date	Place
National Association of Letter Carriers (NALC)	(mailed)		
National Audobon Society	Sandra Tanzer	March 27	NY
National Benevolent Association	Arthur Buel	April 2	IL
National Catholic Development Conference, Inc.	Rev. John T. Ryan	March 27	NY
National Center for Policy Analysis	John C. Goodman (Exhibits Only)	March 25	TX
National Federation of the Blind	James Gashel Rami Rabby	March 12 March 27	D.C. NY
National Federation of the Blind of Minnesota	Joyce Scanlan	April 2	MN
National Jewish Center for Immunology & Respiratory Medicine & Alliance of Nonprofit Mailers	Jay Reardon	March 18	CO
National Multiple Sclerosis Society	John P. Donnelly Eleanor Novak	March 27 April 2	NY MN
National Newspaper Association	Robert Brinkman (mailed)		
National Society of Fund Raising Executives	Janice Watson	April 2	MN
National Tour Association	William Grossman Dee Larson	March 27 April 2	NY MN
National University Continuing Education Association (UCLA)	Michael Bley	March 24	CA
(University of Northern Colorado)	Dr. Nancy L. Reddy	March 18	CO
(University of Minnesota)	Gayle Hendrickson	April 2	MN
(University of Chicago)	Philip M. Nowlen	April 2	IL

Party	Witness	Date	Place
The Network	Kate Houston	April 2	MN
New Hope Center	Terry Hemsworth	April 2	MN
New Mexico Boys & Girls Ranch Inc.	Bruce N. Fleming	March 18	CO
New York Easter Seal Society	Blair Hearth	March 27	NY
New York Lung Association	Edith Ewenstein	March 27	NY
The New York Public Library	Gregory Long	March 27	NY
New York University, School of Continuing Education	Dorothy Durkin	March 27	NY
Nonprofit Mailers Federation (NMF)	Carolyn A. Emigh	March 12 March 18	D.C. CO
(Denver Botanic Gardens)	Nancy P. Brittain	March 18	CO
(Swedish Medical Center Foundation)	Cathie Engblom Kearns	March 18	CO
(World Vision Inc.)	Rory Starks *	March 24	CA
(AMS Response, Inc.)	Robert Bailey	March 24	CA
(NMF)	Carolyn A. Emigh	March 24	CA
(Mission Aviation Fellowship)	Ron Frey	March 24	CA
(Nonprofit Mailers)	George E. Miller	March 25	TX
(American Bible Society)	Lorraine Kupper	March 27	NY
(NMF)	Carolyn A. Emigh	March 27	NY
(NMF)	George Miller	April 2	MN
(Christian Appalachian Project)	Ralph Beiting	April 2	IL
	Richard Steinberg (Exhibits only)	April 2	IL
(University of Kansas Alumni Association)	Fred Williams	April 2	IL
(NMF)	Carolyn E. Emigh	April 2	IL

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* Testimony not included in package. To be submitted later.

Party	Witness	Date	Place
Oberlin College (Alumni Association)	Barbara Pierce (mailed)		
Oblate Missions	Joseph E. Gamble, Jr.	March 25	TX
Our Sunday Visitor	Richard L. Horvath and Joseph J. Isca	March 25	TX
Panel			
(National Lutheran Campus Ministry)	Laurel Hensel	April 2	IL
(Associated Church Press)	Donald Hetzler	April 2	IL
(The Chicago Catholic)	Robert Johnston	April 2	IL
Patriarch Athenagoras National Institute	John W. Darr	March 18	CO
Paxton Herald	Annette A. Antoun (mailed)	March 12	DC
PBS - Will TV	William Glaeser	April 2	IL
PCA Messenger (Presbyterian Church in America)	Arthur H. Matthews	March 18	GA
Pepperdine University (See C.A.S.E.)			
Plainedge Public Library	Joseph Eisner	March 27	NY
Plymouth Park Baptist Church	John C. Parker	March 25	TX
Postal Church Service	John S. Probst	March 25	TX
Potomac & Chesapeake Association of College Admission Counselors	James J. Gorman	March 12	D.C.
The Progressive	Pat Vander Meer (mailed)		
PTSA - 31st District	Peggy Barber	March 24	CA

Party	Witness	Date	Place
Reason Foundation	Robert W. Poole, Jr.	March 24	CA
Response Development Corporation	Joseph Salta	March 12	D.C.
Royall & Company	William A. Royall, Jr.	April 2	IL
Sacred Heart League & Sacred Heart Southern Missions	Rev. Robert Hess (Testimony & Statement)	March 25	TX
Salesian Missions	Rev. E.J. Cappelletti (by mail)	March 27	NY
Scott, Gordon	Gordon Scott	April 2	IL
Small Business Administration	Charles A. Cadwell	March 24	D.C.
Society of St. Vincent DePaul	Edward F. Crawley	April 2	IL
Southern Cross	John E. Markwalter	March 18	GA
St. Joseph's Indian School	Cy Maus	April 2	MN
Stokes, McNeill	McNeill Stokes	March 18	GA
Stonecroft Ministries	Jo Ann Reid	April 2	IL
Suffolk County Legislature	Joseph L. Townsend, Jr. Gregory L. Blass - (Mailed)	March 27	NY
Swedish Medical Center Foundation (See NMF)			
TCMA	Herb Gertz	March 12	D.C.
Texas Catholic	Debbie Landregan Elaine Smith (Exhibits Only)	March 25	TX
Texas Press Association (Wise County Messenger)	Roy J. Eaton	March 25	TX

Party	Witness	Date	Place
United Methodist Reporter	Spurgeon M. Dunnam, III	March 25	TX
United Way	Leslie Turner and Byron Laher	April 2	MN
Unity School of Christianity	Rev. John Strickland	April 2	IL
University of Denver	J. Terry Jones	March 18	CO
University of Georgia (Georgia Center for Continuing Education)	Richard B. Lane	March 18	GA
University of Minnesota (See C.A.S.E.)			
University of Northern Colorado (See National Univ. Continuing Education Association)			
University of Wisconsin (See C.A.S.E.)			
University of Wisconsin-Milwaukee	John F. Bibby (mailed)		
U.S. Chamber of Commerce	J.R. Kirkland (mailed)		
Veterans of Foreign Wars	Wade Ladue John O'Neill, Jr.	April 2 April 2	MN MN
VIP Travel Agency	Earlene Causey	March 25	TX
Virginia Association of Children's Homes	Robert W. McCullough	March 12	D.C.
Weber State College	Howard G. Noel	March 18	CO
WETA	Sally Wells	March 12	D.C.
Wise County, Texas	Robert Lee Holloway, Jr.	March 25	TX
WLPA & ILCA (See AFL/CIO)			

Party	Witness	Date	Place
WNET TV Station	Hudson G. Stoddard	March 27	NY
World Opportunities International	Ken Phillips	March 24	CA
World Press Review	Alfred Balk (mailed)		
World Wide Pictures, Inc.	Larry Backlund	April 2	MN
Yale University	John G. Simon (mailed)		
YWCA of Greater Atlanta	Carolyn T. Woods	March 17	GA
YMCA of Metropolitan Denver	Peter Gabel	March 18	CO